

07/17/2020



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

I. All Regents

Via WebEx Videoconference

Wednesday, August 5, 2020

12:30 p.m.

1. Calling of the Roll
2. Declaration of Conflicts
3. Approval of Administrative Code Emergency Rules for Chapters UWS 4, "Procedures for Dismissal and for Dismissal and Discipline in Title IX Cases," UWS 7, "Dismissal of Faculty in Special Cases," UWS 11, "Dismissal of Academic Staff for Cause and for Dismissal and Discipline in Title IX Cases," and UWS 17, "Student Nonacademic Disciplinary Procedures."
4. Approval of Interim Changes to Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"
5. Adjourn

Webex registration information and meeting materials can be found during the week of the meeting at <https://www.wisconsin.edu/regents/meetingmaterials/> or may be obtained from Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, Madison, WI 53706, (608) 262-2324. Persons with disabilities requesting accommodations are asked to contact Jess Lathrop in advance of the meeting.

Wednesday, August 05, 2020

APPROVAL OF ADMINISTRATIVE CODE EMERGENCY RULE DRAFTS FOR CHAPTERS UWS 4, 7, 11, AND 17

REQUESTED ACTION

Adoption of Resolution 3, approving the Administrative Code Emergency Rule Drafts for Wisconsin Administrative Code, Chs. UWS 4 ("Procedures for Dismissal and for Dismissal and Discipline in Title IX Cases"); UWS 7 ("Dismissal of Faculty in Special Case"); UWS 11 ("Dismissal of Academic Staff for Cause and for Discipline and Dismissal in Title IX Cases"); and UWS 17 ("Student Nonacademic Disciplinary Procedures").

Resolution 3. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Administrative Code Emergency Rule Drafts for Wisconsin Administrative Code, Chs. UWS 4 ("Procedures for Dismissal and for Dismissal and Discipline in Title IX Cases"); UWS 7 ("Dismissal of Faculty in Special Case"); UWS 11 ("Dismissal of Academic Staff for Cause and for Discipline and Dismissal in Title IX Cases"); and UWS 17 ("Student Nonacademic Disciplinary Procedures").

SUMMARY

Title IX of the Education Amendments of 1972 requires that all educational institutions that receive federal funds of financial assistance prohibit sex discrimination in their education programs and activities (34 C.F.R. Part 106). Over the past eighteen months, the U.S. Department of Education (ED) has engaged in rulemaking to further examine and clarify schools' responsibilities in responding to reports of sex discrimination, sexual harassment, sexual violence, intimate partner violence, and stalking involving faculty, staff, and students as well as pregnant and parenting students. On May 5, 2020, the Department released a final rule with which all recipient educational institutions are required to comply by August 14, 2020.

The University of Wisconsin System is seeking to modify Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code in order to comply with the substantive and procedural requirements provided in the new federal regulations. The University of Wisconsin System

is also seeking interim policy changes to Board of Regents Policy Document 14-2, Sexual Violence and Sexual Harassment.

UW System staff have proposed changes to applicable policies and procedures through the emergency rule process. The UW System requested feedback on these proposed changes. A summary of that feedback can be found in Attachment E.

Presenter(s)

- Quinn Williams, UW System General Counsel
- Katie Ignatowski, UW System Director of Compliance and Integrity
- Sarah Harebo, UW System Title IX and Clery Administrator

BACKGROUND

The University of Wisconsin System (UW System) seeks to modify the University of Wisconsin Board of Regents (Board) administrative rules, Ch. UWS 4, 7, 11, and 17. All UW System institutions would be affected by the proposed rule revisions.

The Board has statutory authority for Chapters UWS 4, 7, 11, and 17 and Regent Policy Documents under Wis. Stat. 36.09(1) of the Wisconsin Statutes, which reads as follows: “The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system.”

Outline of Major Substantive Changes

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

The new federal regulations narrow the scope of conduct to which Title IX applies but specify that schools are not prohibited from addressing a broader scope of conduct under institution conduct codes. The University of Wisconsin System is committed to continue to address all forms of sexual misconduct, regardless of whether they fall within the scope of federal Title IX. Under the proposed changes, allegations of sexual misconduct that do not fall within the scope of Title IX will continue to be addressed using our student and employee conduct codes.

Definitions

The new federal regulations require the adoption of the definitions for sexual assault, dating violence, domestic violence, and stalking from the federal Clery and Violence Against Women Acts. Previous UWS code definitions mirrored the Wisconsin criminal statutes.

The definition of sexual harassment for Title IX purposes is redefined to include quid pro quo and “unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectionably offensive...” Prior to these changes the standard mirrored Title VII in requiring that conduct be “severe or pervasive (and objectionably offensive).” Conduct that meets the Title VII standard but does not meet the new Title IX standard will continue to be addressed under UW System conduct codes.

The new federal regulations outline the instances of sexual misconduct to which schools are required to respond. A school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's education program or activity; (3) against a person in the United States. These final regulations define “education program or activity” to include situations over which the school exercised substantial control as well as buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses. The proposed code language specifies the procedures to be used by UW System schools in addressing sexual misconduct that meets the new definition and scope of Title IX, as well as the procedures to be used in addressing sexual misconduct that falls outside of the scope of Title IX.

The proposed language adds a definition of sexual exploitation to the list of sexual misconduct that UW System schools will address. This change is in line with the majority of peer institutions, including most Big Ten universities. Sexual exploitation is defined as “a person taking nonconsensual sexual advantage of another person.” Under our current policies, such conduct sometimes falls outside of the definitions of sexual misconduct and must be addressed through other policies. This change will officially recognize sexual exploitation as a form of sexual misconduct.

Title IX Sexual Misconduct Procedures

Notice

The new federal regulations require that notice to parties of formal Title IX complaints outline the grievance process, explain the allegations of sexual misconduct with sufficient detail, include a statement that the respondent is presumed not responsible, inform parties of their right to an advisor and to review evidence, and cite to UW System code provisions that prohibit making a false statement.

Mandatory Dismissal and Discretionary Dismissal

The federal regulations define certain Title IX cases which must be dismissed by a school and certain Title IX cases which may be dismissed but are not required to be. Universities are required to dismiss allegations that do not meet the definitions of sexual misconduct under Title IX, that did not occur during the university's education program or activity, or that occurred outside of the United States. Universities may still address these under other codes of conduct or state law. A school has the discretion to dismiss a complaint if it is formally withdrawn in writing, if the respondent is no longer enrolled or employed by the school, or if circumstances are such that it prevents the school from gathering sufficient evidence to reach a determination. A discretionary dismissal requires notice and specified reasons for discretionary dismissal of the complaint. The parties have the right to appeal a university's mandatory dismissal or discretionary dismissal of a Title IX complaint. The proposed language incorporates these changes.

Investigation

Under the federal regulations, investigations of formal Title IX complaints must be conducted by an assigned investigator and must allow the parties an opportunity to present witnesses and evidence as well as review the evidence provided. Investigators are not permitted to make official findings of responsibility but may make recommended findings. The new Title IX regulations require that official findings be made only after a hearing. The proposed language incorporates these changes.

Hearing

The federal regulations require that all postsecondary schools conduct live hearings with cross-examination conducted directly, orally, and in real time for all Title IX cases. Cross-examination is to be conducted by the party's advisor; direct party questioning is not permitted. A hearing officer must determine the relevance of each question and explain any decision to exclude a question as not relevant. At a live hearing, the institution must provide, without fee or charge, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. The proposed language incorporates these changes.

Previous Action or Discussion

UWS 4, 7, 11, and 17

The Board last discussed this topic at its July 20, 2020 meeting when it approved scope statements necessary to revise Chapters 4, 7, 11, and 17 of the Wisconsin Administrative

Code. This discussion occurred after the preliminary hearing and public comment period regarding the scope statements, which the Board approved at its July 9, 2020 meeting. Prior to that, the Board of Regents amended UWS Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code in April 2015 through Resolutions 10476, 10477, and 10478, all of which addressed the Dear Colleague Letter updates from the U.S. Department of Education.

Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"

In December 1980, the Board of Regents adopted Resolution 2297, which created Regent Policy Document (RPD) 80-8, outlining a process for institutions to report incidents of sexual harassment, as well as establishing the Regent Task Force on the Status of Women. In April and May 1981, the Board of Regents adopted Resolutions 2361 and 2384, which respectively adopted many of the task force recommendations and replaced RPD 80 -8 with RPD 81-2. Resolution 3758, adopted in April 1987, updated RPD 81 -2, which was subsequently renumbered as RPD 14 -2. The Board of Regents updated RPD 14 -2 through the adoption of Resolution 10786 in December 2016.

UW System Task Force on Sexual Violence and Harassment

In July 2014, the Present of the UW System ordered the Task Force on Sexual Violence and Harassment to lead and coordinate systemwide efforts to strengthen UW System's capacity to prevent sexual violence and harassment. This Task Force reported to the Board of Regents in December 2016 to provide a variety of findings and recommendations on how to reform Board of Regents and UW System policies.

UW System Policy

In June 2018, the Board of Regents adopted Resolution 11038, which called for the UW System to create policies to provide personnel records for former or current UW System employees, document allegations and investigations of employee sexual harassment, and form appropriate reference check procedures for prospective UW System employees. This resulted in the revision of UW System Administrative Policy 1261 and UW System Administrative Policy 1275 in January 2019.

Related Policies

- Regent Policy Document 14-2, "Sexual Harassment and Sexual Violence"
- Chapter UWS 4, Wis. Admin. Code: "Procedures for Dismissal"
- Chapter UWS 7, Wis. Admin. Code: "Dismissal of Faculty in Special Cases"
- Chapter UWS 11, Wis. Admin. Code: "Dismissal of Academic Staff for Cause"
- Chapter UWS 17, Wis. Admin. Code: "Student Nonacademic Disciplinary Procedures"
- UW System Administrative Policy 1261, "Personnel Files"
- UW System Administrative Policy 1275, "Recruitment Policies"

ATTACHMENTS

- A) Scope Statements for UWS 4, 7, 11, and 17
- B) Governor Evers' Approval of Scope Statements for UWS 4, 7, 11, and 17
- C) Rule Drafts for UWS 4, 7, 11, and 17
- D) Rule Order for UWS 4, 7, 11, and 17
- E) Summary of Comments on the Emergency Rule Drafts for UWS 4, 7, 11, and 17

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 4

Relating to: Procedures for Dismissal of Faculty

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including faculty. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

2. Detailed description of the objective of the proposed rule:

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 4, regarding Procedures for Dismissal of Faculty, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 4 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The current version of Chapter UWS 4 provides a disciplinary process for pursuing dismissal of faculty for just cause. This process has been fair and effective since it was first published in 1975. The Chapter previously has been amended through the administrative rule-making process to update the Chapter on several occasions.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 4 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 4 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 36.09(1)(a): “The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

40 hours.

6. List with description of all entities that may be affected by the proposed rule:

All University of Wisconsin System institutions and the faculty thereof.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including faculty. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of faculty sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual

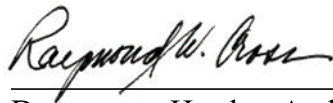
misconduct and effectively implements remedies for victims. Chapter UWS 4 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Sarah Harebo, Title IX and Clery Administrator, 608-262-5739



Department Head or Authorized Signature

June 18, 2020

Date Submitted

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 7

Relating to: Procedures for Dismissal of Faculty in Special Cases

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including faculty. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

2. Detailed description of the objective of the proposed rule:

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 7, regarding Procedures for Dismissal of Faculty in Special Cases, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 7 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The current version of Chapter UWS 7 provides a disciplinary process for pursuing dismissal of faculty for just cause in special cases. This process has been fair and effective since it was first published in 2007. The Chapter previously has been amended through the administrative rule-making process to update the Chapter.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 7 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 7 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 36.09(1)(a): “The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

40 hours.

6. List with description of all entities that may be affected by the proposed rule:

All University of Wisconsin System institutions and the faculty thereof.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including faculty. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of faculty sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual

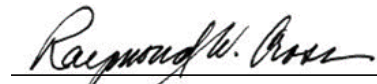
misconduct and effectively implements remedies for victims. Chapter UWS 7 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Sarah Harebo, Title IX and Clery Administrator, 608-262-5739



Department Head or Authorized Signature

June 18, 2020

Date Submitted

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 11

Relating to: Procedures for Dismissal of Academic Staff for Cause

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including academic staff. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

2. Detailed description of the objective of the proposed rule:

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 11, regarding Procedures for Dismissal of Academic Staff for Cause, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 11 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The current version of Chapter UWS 11 provides a disciplinary process for pursuing dismissal of academic staff for just cause, including cases of serious criminal misconduct, such as sexual assault. This process has been fair and effective since it was first published in 1975. The Chapter previously has been amended through the administrative rule-making process to update the Chapter.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 11 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 11 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 36.15(3): “A person having an academic staff appointment for a term may be dismissed prior to the end of the appointment term only for just cause and only after due notice and hearing. A person having an academic staff appointment for an indefinite term who has attained permanent status may be dismissed only for just cause and only after due notice and hearing. In such matters the action and decision of the board, or the appropriate official authorized by the board, shall be final, subject to judicial review under ch. [227](#). The board shall develop procedures for notice and hearing which shall be promulgated as rules under ch. [227](#).”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

60 hours.

6. List with description of all entities that may be affected by the proposed rule:

All University of Wisconsin System institutions and the faculty thereof.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including academic staff. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of academic

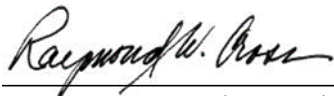
sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual misconduct and effectively implements remedies for victims. Chapter UWS 11 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Sarah Harebo, Title IX and Clery Administrator, 608-262-5739



Department Head or Authorized Signature

June 18, 2020

Date Submitted

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 17

Relating to: Nonacademic Student Misconduct

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university students. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's students and to avoid jeopardizing access to federal funding, which is critical to supporting the University's students.

2. Detailed description of the objective of the proposed rule:

The Board of Regents of the University of Wisconsin System seeks to modify Chapter UWS 17, regarding Student Nonacademic Misconduct, to comply with new Title IX regulations the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving students. Specifically, the Board seeks to amend Chapter UWS 17 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations and to ensure institutions are able to continue to properly respond to allegations of sexual misconduct in light of these required changes. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The current version of Chapter UWS 17 provides a student disciplinary process for handling student misconduct allegations, including allegations of sexual misconduct. This process has been fair and effective since it was first published in 1996. In 2009 and 2015, the Chapter was updated and amended through the administrative rule-making process. The Chapter authorizes each institution of the University of Wisconsin System to adopt consistent policies and procedures, and UW institutions have adopted such policies and procedures.

The modifications contemplated by this rulemaking would incorporate into law changes necessary to conform Chapter UWS 17 to the new federal Title IX regulations. Institutions would adopt policies consistent with the revised Chapter.

The new federal regulations are contained in 34 CFR Part 106. 34 CFR Part 106.30 requires use of certain definitions, including Title IX-specific definitions for sexual harassment, stalking, sexual assault, and other Title IX-covered violations. However, the federal regulations also permit UW institutions to continue to address sexual violence and harassment that fall outside of Title IX's scope and related definitions, allowing institutions to continue to address a broader scope of conduct under their own policies. Thus, the University of Wisconsin System will consider modifying or adding definitions of sexual misconduct to Chapter UWS 17.09 to ensure institutions are able to appropriately address all sexual misconduct allegations, including those outside the scope of Title IX.

Requirements in the federal regulations (34 CFR Part 106.45) relate to the grievance process for formal complaints, including investigations, informal resolution options, live hearings, and appeals. Among other things, these requirements include:

- providing, upon request, an advisor to complainants and respondents to conduct cross-examination
- providing specific notice of allegations to respondents
- application of a relevance standard by the hearing body

These revisions will likely result in revisions to Chapter UWS 17.12. The basis for appeal in 34 CFR 106.45(b)(8) likely will require revisions to Chapter UWS 17.13.

An alternative to modifying Chapter 17 would be to continue to operate with both the current Chapter UWS 17 and the new federal Title IX regulations. However, this would seem to be in conflict with the language in the federal rules (see 34 CFR 106.45(h)) preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation, as well as complicated and confusing procedures for students.

More specifically, failure to comply with Title IX may result in cutoff of federal funds to a higher education institution. Additionally, a higher education institution that fails to have Title IX policies and procedures that are compliant with the regulations and available to complainants and respondents likely will be considered to have been deliberately indifferent to its Title IX obligations and therefore exposed to liability through private-party lawsuits filed by respondent and complainant students.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wisconsin Statutes, Section 36.35 states, "The board shall promulgate rules under ch.227 governing student conduct and the procedures for the administration of violations." These rules will govern student conduct related to sexual harassment and sexual violence and set forth the procedures for addressing violations.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

100 hours.

6. List with description of all entities that may be affected by the proposed rule:

All University of Wisconsin System institutions and the students thereof.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of student sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

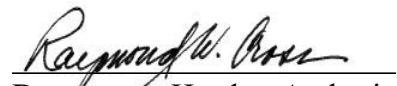
The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against students. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. As stated in the regulations, universities are obligated to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual misconduct and effectively implements remedies for victims. Chapter UWS 17 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance, including but not limited to changes to investigative procedures, hearing procedures, and appeals.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Raymond Cross
President of the University of Wisconsin System
608-262-2321

A handwritten signature in cursive script, reading "Raymond W. Cross", written over a horizontal line.

Department Head or Authorized Signature

June 18, 2020
Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

June 19, 2020

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to procedures for dismissal of faculty (Wis. Admin. Code ch. UWS 4); and
- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to procedures for dismissal of faculty in special cases (Wis. Admin. Code ch. UWS 7); and
- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to procedures for dismissal of academic staff for cause (Wis. Admin. Code ch. UWS 11); and
- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to nonacademic student misconduct (Wis. Admin. Code ch. UWS 17).

Please direct any questions about this letter to my policy director, Jenni Dye.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers".

Tony Evers
Governor

Cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Jenni Dye, policy director (jenni.dye@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
Quinn Williams, UWS (qwilliams@uwsa.edu)

Chapter UWS 4

PROCEDURES FOR FACULTY DISMISSAL AND FOR DISMISSAL AND DISCIPLINE IN TITLE IX CASES

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UWS 4.01 Dismissal for cause.

- (1) Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the end of the faculty member's his/her term of appointment only by the board and only for just cause and only after due notice and hearing. A decision not to renew a probationary appointment or not to grant tenure does not constitute a dismissal.
- (2) A faculty member is entitled to enjoy and exercise all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.
- (3) Faculty dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in UWS 4.12+ shall be governed by UWS 4.11 to UWS 4.24. UWS 4.01 to UWS 4.10 shall not apply to faculty dismissal based on Title IX misconduct.

UWS 4.015 Definitions. The following terms shall have the meaning given below and shall apply to UWS 4.01 through UWS 4.10:

- (1) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."
- (2) "Complainant" ~~means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation as defined in this section. means any individual who is reported to have been subjected to sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, or stalking as defined in this section subs. (5), (6), (9), (10), and (11).~~
- (3) "Complaint" means an allegation against a faculty member reported to an appropriate university official.
- (4) "Consult" or "consulting" means thoroughly reviewing and discussing the relevant facts and discretionary issues.
- (5) "Dating violence" means ~~violence committed by an employee against another person with whom they are in a "dating relationship" as defined in s. 813.12 (1) (ag), Stats.~~ violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (6) "Domestic violence" means ~~conduct defined as "domestic abuse" in ss. 813.12 (1) (am) and 968.075, Stats. felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075).~~
- (7) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."
- (8) "Reporting Party" means one or more individuals or groups filing a complaint as defined in sub. (3). A reporting party may also be a complainant as defined in sub. (2).
- (9) "Sexual harassment" means ~~conduct defined in s. 111.32, Stats.~~ conduct on the basis of sex that satisfies one or more of the following:
- An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct;
 - Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal "reasonable person" standard:
 - Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity; or

2. Is so severe or pervasive, and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in a university sponsored or supported activity or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.

(10) "Sexual assault" means ~~conduct defined in s. 940.225, Stats.~~ an offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).

(a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.

(b) Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

(c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)

(d) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)

(11) "Stalking" means ~~conduct defined in s. 940.32, Stats.~~ engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

(12) "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in this section. A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

(13) "Incapacitation" means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

(14) "Sexual Exploitation" occurs when an individual attempts, takes or threatens to take, nonconsensual sexual advantage of another person. Examples include, but are not limited to:
a) Without the knowledge and consent of all participants –

- 1) observing, recording, or photographing private body parts or sexual activity of the complainant(s);
- 2) allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant(s); or
- 3) otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant(s);
- b) Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing the complainant to do the same.
- c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activitysexual contact or sexual intercourse;
- d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity;
- e) Coercing the complainant to engage in sexual activity for money or anything of value;
- f) Threatening distribution of the following, to coerce someone into sexual activity or to providing money or anything of value:
 - 1) Photos, videos, or recordings depicting private body parts or sexual activity of the complainant(s), or
 - 2) Other information of a sexual nature involving the complainant (for example, may include but is not limited to, sexual history or sexual orientation).

UWS 4.02 Responsibility for charges.

- (1) Whenever the chancellor of an institution within the University of Wisconsin system receives a complaint against a faculty member which the chancellor he or she deems substantial and which, if true, might lead to dismissal under s. UWS 4.01, the chancellor, or designee, shall within a reasonable time initiate an investigation and shall, prior to reaching a decision on filing charges, offer to discuss the matter informally with the faculty member. For complaints of sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the chancellor, or designee, shall appoint the Title IX Coordinator, or designee, to initiate an investigation in accordance with applicable policies. The chancellor, or designee, shall also offer to discuss the matter informally with the complainant, and provide information regarding rights under this chapter. Both the faculty member and the complainant shall have the right to be accompanied by an advisor of their choice at any meeting or proceeding that is part of the institutional disciplinary process. A faculty member may be dismissed only after receipt of a written statement of specific charges from the chancellor as the chief administrative officer of the institution and, if a hearing is requested by the faculty member, in accordance with the provisions of this chapter. If the faculty member does not request a hearing, action shall proceed along normal administrative lines but the provisions of ss. UWS 4.02, 4.09, and 4.10 shall still apply.
- (2) Any formal statement of specific charges for dismissal sent to a faculty member shall be accompanied by a statement of the appeal procedures available to the faculty member.
- (3) The statement of charges shall be served personally, by electronic means, or by certified mail, return receipt requested. If such service cannot be made within 20 days, service shall be accomplished by first class mail and by publication as if the statement of charges were a summons and the provisions of s. 801.11 (1) (c), Stats., were applicable. Such service by mailing and publication shall be effective as of the first insertion of the notice of statement of charges in the newspaper. If the statement of charges includes sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the statement shall be provided to the complainant upon request, except as may be precluded by applicable state or federal law.

UWS 4.03 Standing faculty committee. The faculty of each institution shall provide a standing committee charged with hearing dismissal cases and making recommendations under this chapter. This

standing faculty committee shall operate as the hearing agent for the board pursuant to s. [227.46 \(4\)](#), Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of law and decision to the board according to s. [UWS 4.07](#).

UWS 4.04 Hearing. If the faculty member requests a hearing within 20 days of notice of the statement of charges (25 days if notice is by first class mail and publication), such a hearing shall be held not later than 20 days after the request except that this time limit may be enlarged by mutual written consent of the parties, or by order of the hearing committee. The request for a hearing shall be addressed in writing to the chairperson of the standing faculty committee created under s. [UWS 4.03](#).

UWS 4.05 Adequate due process.

(1) A fair hearing for a faculty member whose dismissal is sought under s. [UWS 4.01](#) shall include the following:

- (a) Service of written notice of hearing on the specific charges at least 10 days prior to the hearing;
 - (b) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
 - (c) A right to be heard in the faculty member's his/her defense;
 - (d) A right to an advisor, counsel, or other representatives, and to offer witnesses;
 - (e) A right to confront and cross-examine adverse witnesses. If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, ~~or sexual exploitation, or~~ stalking, the hearing committee may reasonably restrict the faculty member or the complainant from questioning each other;
 - (f) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
 - (g) Written findings of fact and decision based on the hearing record;
 - (h) Admissibility of evidence governed by s. [227.45 \(1\) to \(4\)](#), Stats.
- (2) If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have all the rights provided to the faculty member in sub. (1) (a) to (h), except as may be precluded by applicable state or federal law.

UWS 4.06 Procedural guarantees.

- (1) Any hearing held shall comply with the requirements set forth in s. [UWS 4.05](#). The following requirements shall also be observed:
- (a) The burden of proof of the existence of just cause is on the administration or its representatives;
 - (am) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation or stalking, the standard of proof shall be a preponderance of the evidence;
 - (b) No faculty member who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall be qualified to sit on the committee in that case;
 - (c) The hearing shall be closed unless the faculty member under charges requests an open hearing, in which case it shall be open (see subch. [V of ch. 19](#), Stats., Open Meeting Law);
 - (d) The faculty hearing committee may, on motion of either party, and, if the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, on the motion of the complainant, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under s. [UWS 4.03](#);

- (e) The faculty hearing committee shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges;
- (f) If the faculty hearing committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel shall be to advise the committee, consult with them on legal matters, and such other responsibilities as shall be determined by the committee within the provisions of the rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under s. [UWS 4.03](#);
- (g) If a proceeding on charges against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, [faculty member he/she](#) may elect that such proceeding be carried to a final decision. Unless [the faculty member he/she](#) so elects in writing, the proceeding shall be discontinued at the expiration of the appointment;
- (h) If a faculty member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit;
- (i) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration and the faculty member, with board approval, at any time prior to a final decision by the board;
- (j) Adjournment shall be granted to enable the parties, including the complainant, to investigate evidence as to which a valid claim of surprise is made.

UWS 4.07 Recommendations: to the chancellor: to the regents.

- (1) The faculty hearing committee shall send to the chancellor and to the faculty member concerned, as soon as practicable after conclusion of the hearing, a verbatim record of the testimony and a copy of its report, findings, and recommendations. The committee may determine that while adequate cause for discipline exists, some sanction less severe than dismissal is more appropriate. Within 20 days after receipt of this material the chancellor shall review it and afford the faculty member an opportunity to discuss it. The chancellor shall prepare a written recommendation within 20 days following the meeting with the faculty member, unless [the chancellor's his/her](#) proposed recommendation differs substantially from that of the committee. If the chancellor's proposed recommendations differ substantially from those of the faculty hearing committee, the chancellor shall promptly consult the faculty hearing committee and provide the committee with a reasonable opportunity for a written response prior to forwarding [the his/her](#) recommendation. If the recommendation is for dismissal, the recommendation shall be submitted through the president of the system to the board. A copy of the faculty hearing committee's report and recommendations shall be forwarded through the president of the system to the board along with the chancellor's recommendation. A copy of the chancellor's recommendation shall also be sent to the faculty member concerned and to the faculty committee. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence [sexual exploitation](#), or stalking, the complainant shall have all rights provided to the faculty member in this paragraph, including the right to receive a copy of the chancellor's recommendation, except as may be precluded by applicable state or federal law.
- (2) Disciplinary action other than dismissal may be taken by the chancellor, after affording the faculty member an opportunity to be heard on the record, except that, upon written request by the faculty member, such action shall be submitted as a recommendation through the president to the board together with a copy of the faculty hearing committee's report and recommendation. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, [sexual exploitation](#), or stalking, the complainant shall have all the rights provided to the faculty member in this paragraph.

UWS 4.08 Board review.

- (1) If the chancellor recommends dismissal, the board shall review the record before the faculty hearing committee and provide an opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, unless the board decides to drop the charges against the faculty member without a hearing or the faculty member elects to waive a hearing. This hearing shall be closed unless the faculty member requests an open hearing (see subch. [V of ch. 19](#), Stats., Open Meeting

Law). For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have the same opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, as the faculty member.

- (2) If, after the hearing, the board decides to take action different from the recommendation of the faculty hearing committee and/or the chancellor, then before taking final action the board shall consult with the faculty hearing committee and/or the chancellor, as appropriate.
- (3) If a faculty member whose dismissal is sought does not request a hearing pursuant to s. UWS 4.04 the board shall take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.
- (4) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the faculty member and complainant shall be simultaneously notified of the board's final decision.

UWS 4.09 Suspension from duties. Pending the final decision as to ~~his/her~~ dismissal, the faculty member shall not normally be relieved of duties; but if, after consultation with appropriate faculty committees the chancellor finds that substantial harm to the institution may result if the faculty member is continued in the faculty member's his/her position, the faculty member may be relieved immediately of the faculty member's his/her duties, but ~~his/her~~ pay shall continue until the board makes its decision as to dismissal, unless the chancellor also makes the determinations set forth in s. UWS 7.06 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 7.06 shall apply.

UWS 4.10 Date of dismissal. A decision by the board ordering dismissal shall specify the effective date of the dismissal.

UWS 4.11 Dismissal for cause or lesser discipline for Title IX misconduct. (1) The board may dismiss a faculty member for cause, or impose lesser discipline on a faculty member, for Title IX misconduct as defined in s. UWS 4.12.

(2) Title IX misconduct allegations against faculty shall follow the disciplinary procedure in s. UWS 4.11 – s. UWS 4.24. The board may dismiss a faculty member having tenure only for just cause and may otherwise discipline a faculty member having tenure only after due notice and hearing. The board may dismiss a faculty member having a probationary appointment prior to the end of the faculty member's term of appointment only for just cause and may be otherwise discipline the faculty member only after due notice and hearing.

(3) A faculty member is entitled to enjoy and exercise all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. These rights and privileges shall be observed in determining whether or not just cause for dismissal, or grounds for other discipline, exists.

(4) The faculty member is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process. The burden of proof of the existence of just cause for a dismissal, or of grounds for other discipline, is on the university administration.

UWS 4.12 Definitions. As used in s. UWS 4.11 – s. UWS 4.24, the following terms shall have the meaning given below:

- (1) “Complainant” means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.**~~means any individual who is alleged to be the victim of conduct that could constitute sexual harassment, sexual assault, dating violence, domestic violence, or stalking.~~
- (2) “Consent” means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definition of sexual assault in this section.** A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.
- (3) “Consult” or “consulting” means thoroughly reviewing and discussing the relevant facts and discretionary issues.**
- (4) “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.**
- (5) “Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075).**
- (6) “Education program or activity” means, for purposes of a formal Title IX misconduct only, locations, events, or circumstances at which the university exercised substantial control over both the faculty member and the context in which the sexual harassment-misconduct occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.**
- (7) “Formal complaint” is, for the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against a faculty member and requesting that the university investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.**

- (8) “Incapacitation” means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person’s decision-making ability; awareness of consequences; ability to make informed, rational judgments; and capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.
- (9) “Preponderance of the evidence” means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than “clear and convincing evidence.”
- (10) “Respondent” means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.
- (11) “Sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).
- (a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- (b) Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- (c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
- (d) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)
- (12) “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
- a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct;
—Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard:
Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.
- (13) “Stalking” means engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional

distress.

(14) "Title IX misconduct" means sexual harassment, sexual assault, stalking, dating violence, and/or domestic violence as defined in this section.

UWS 4.13 Application of Title IX misconduct disciplinary procedure. This disciplinary procedure for Title IX misconduct will be used only when all of the following requirements are met:

(1) There is a formal complaint alleging Title IX misconduct on the basis of sex.

(2) The conduct occurred in the United States.

(3) The conduct occurred within a university education program or activity.

(4) The complainant must be participating in or attempting to participate in the education program or activity of the university at the time of filing the complaint.

(5) The complainant or Title IX coordinator have submitted a formal complaint.

UWS 4.14 Dismissal of formal Title IX complaint and related appeal. (1) The university must dismiss a formal complaint consisting of allegations that:

(a) Would not constitute Title IX misconduct if proved;

(b) Did not occur in a university education program or activity; or

(c) Did not involve actions against someone physically located in the United States.

(2) The university may dismiss a formal complaint when:

(a) The complainant formally requests in writing to withdraw the formal complaint;

(b) The faculty member is no longer employed by the university; or

(c) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal complaint.

(3) The university generally shall decide whether to dismiss a formal complaint within 30 days of receipt of the formal complaint, but the university may extend that timeline as necessary. If a formal complaint is dismissed, then the university must provide notice of the dismissal and reasons therefore to the faculty member and complainant in writing.

(4) Within 20 days of receipt of the notice of dismissal, the complainant or faculty member may appeal the dismissal by filing a written appeal with the chancellor. The complainant or faculty member may appeal on the following bases:

- (a) Procedural irregularity that affected the outcome of the matter;
- (b) New evidence that was not reasonably available at the time of the dismissal that could affect the outcome of the matter; or
- (c) The university employee making the dismissal decision had a conflict of interest or bias for the faculty member or against the complainant, or against complainants or respondents generally, that affected the dismissal decision.

(5) The chancellor shall provide the ~~faculty member and~~ faculty member and complainant the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor shall simultaneously issue a decision to the complainant and the faculty member within 30 days of receipt of a written appeal. The chancellor's decision shall include the chancellor's rationale for the decision and shall be final.

(6) A Title IX formal complaint does not preclude the university from otherwise pursuing discipline or dismissal against the faculty member under other administrative rules or university policies.

UWS 4.15 Investigation of Title IX misconduct allegations. (1) Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.

(2) The investigator shall provide the faculty member and the complainant with a notice of investigation. The notice must include:

- (a) The grievance process, including informal resolution options;
- (b) The allegations of Title IX misconduct with sufficient detail for the faculty member to prepare a response to the allegations, including but not limited to, the identity of the complainant as well as the date and location of the incident(s) if available;
- (c) A statement affirming the faculty member is presumed not responsible for the alleged violation;
- (d) The faculty member and complainant have the right to an advisor of their choice;
- (e) The faculty member and complainant have the right to inspect and review the evidence; and
- (f) Information about any code of conduct rules which prohibit the faculty member or the complainant from knowingly making false statements or submitting false information during the disciplinary process.

(3). The faculty member and complainant must receive an amended notice of investigation any time additional charges are added during the course of an investigation. Formal complaints involving more than one complainant or respondent may be consolidated if they arise out of the same facts or circumstances.

(4) The university's investigator must:

- (a) Provide both the faculty member and the complainant an equal opportunity to provide witnesses (including fact and expert witnesses) who may be interviewed by the investigator, and other inculpatory and exculpatory evidence;

- (b) Not restrict the ability of either the faculty member or complainant to discuss the allegations under investigation or to gather and present relevant evidence;
- (c) Provide the faculty member and complainant the same opportunity to be accompanied by an advisor of their choice during meetings relating to the investigation but may limit the participation by the advisor so long as those limits are applied equally;
- (d) Provide both the faculty member and the complainant an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a faculty member, complainant, or other source, so that the faculty member and complainant can meaningfully respond to the evidence prior to conclusion of the investigation.

(5) As part of its investigation and disciplinary process, the university cannot access, consider, disclose, or otherwise use a faculty member's or complainant's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the faculty member or complainant, unless the university obtains the faculty member's or complainant's voluntary, written consent to do so in relation to the investigation and disciplinary process.

(6) The university's investigator generally shall complete the investigation and issue a final investigative report within 90 days of the investigator's appointment. However, the investigator may extend the investigation's time frame where circumstances warrant.

UWS 4.16 Review of evidence.

(1) Prior to completion of the final investigative report, the investigator must send to the faculty member and complainant and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the faculty member and the complainant. The evidence may be provided in an electronic format or a hard copy. The evidence provided includes evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from the faculty member, complainant or other source, to permit the faculty member and complainant to meaningfully respond to the evidence prior to conclusion of the investigation.

(32) The faculty member and the complainant must have at least 10 days to submit a written response to the evidence. The investigator will consider any written responses prior to completion of the final investigative report.

UWS 4.17 Final investigative report. The investigator must create a final investigative report that fairly summarizes relevant evidence and send the report to the faculty member and complainant, and their advisors, if any, for their review and response at least 10 days prior to a

hearing. The written report shall be delivered simultaneously to the faculty member and complainant. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless both the faculty member and the complainant waive, in writing, the right to such a hearing.

UWS 4.18 Standing faculty committee and hearing examiner. (1) The chancellor of each university, in consultation with faculty representatives, shall adopt policies providing for the designation of a Title IX misconduct hearing examiner (“hearing examiner”). A hearing examiner shall be selected by the chancellor pursuant to these policies to hear faculty dismissal and discipline cases. Additionally, the faculty of each university shall provide a standing committee (“hearing committee”) charged with hearing faculty dismissal and discipline cases. The chancellor shall appoint the presiding member of the hearing committee, who may be a hearing examiner. The university shall decide whether the matter will be heard by a hearing examiner or a hearing committee.

(2) The hearing committee or the hearing examiner shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held not later than 45 days after completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner.

UWS 4.19 Hearing process. (1) A fair hearing for a faculty member against whom dismissal or other discipline is sought shall include the following:

- (a) Service of written notice of a live hearing on the allegations in the formal complaint at least 10 days prior to the hearing;
- (b) A right to the names of witnesses and of access to documentary and other evidence upon the basis of which dismissal or other discipline is sought;
- (c) A right for the complainant and faculty member to be heard on their own behalf;
- (d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The faculty member’s or complainant’s advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person’s status as a complainant, respondent, or witness. If the faculty member or complainant does not have an advisor, the university shall provide the faculty member or the complainant, without charge, an advisor of the university’s choice to conduct cross-examination on behalf of the faculty member or complainant. The advisor may be an attorney;
- (e) A right to confront and cross-examine adverse witnesses. Cross examination must be conducted directly, orally, and in real time by the faculty member’s or complainant’s advisor. The faculty member and the complainant shall not be permitted to personally conduct cross examination. If the faculty member, the complainant, or a witness does not submit to cross-examination at the hearing, the hearing faculty committee or the hearing examiner must not rely on any statement of the faculty member, complainant, or witness in reaching its findings and recommendations. However, the hearing committee or hearing examiner shall not draw a negative inference in reaching its findings and recommendations based solely on the absence of a faculty member,

complainant, or witness from the hearing or refusal to answer cross-examination or other questions;

(f) A verbatim record of all hearings, which might be a sound recording, made available at no cost for inspection and review;

(g) Written findings of fact and recommendations based on the hearing record. The written findings of fact and recommendations must include:

1. Identification of the allegations potentially constituting Title IX misconduct;

2. A description of the procedural steps taken from the receipt of the formal complaint through the hearing committee's or hearing examiner's completion of written findings and recommendations, including any notifications to the faculty member and the complainant, interviews with the faculty member, the complainant, and witnesses, site visits, methods used to gather evidence, and hearings held;

3. Conclusions regarding the application of the university's conduct rules and policies to the facts; a statement of, and rationale for, the result as to each allegation, including a recommendations regarding responsibility, any disciplinary sanction recommended to be imposed, and whether remedies designed to restore or preserve equal access to the university's educational program or activity will be provided to the complainant; and

4. The university's procedures and permissible bases for the complainant and faculty member to appeal.

(h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats. Only relevant questions may be asked of the faculty member, the complainant, and any witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the faculty member committed the conduct alleged by the complainant, or unless the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the faculty member and are offered to prove consent;

(i) Upon the faculty member's or complainant's request, the university shall provide for the hearing to occur with the faculty member and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the faculty member, and the complainant to simultaneously see and hear witnesses answering questions.

(2) The complainant shall have all the rights provided to the faculty member in sub. (1) (a) to (i).

UWS 4.20 Procedural guarantees. (1) Any hearing held shall comply with the requirements set forth in the preceding section. The following requirements shall also be observed:

(a) The burden of proof of the existence of just cause to support dismissal, or of grounds to support other discipline, is on the university administration;

(am) The standard of proof shall be a preponderance of the evidence;

(b) No faculty member who participated in the investigation of a formal complaint, or who is a material witness, shall be qualified to sit on the hearing committee addressing that complaint. No university employee or other person who participated in the investigation of a formal complaint, or who is a material witness, shall be qualified to serve as the hearing examiner addressing that complaint;

- (c) The hearing shall be closed unless the faculty member or the complainant requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., Open Meeting Law);
- (d) The hearing committee may, on motion of the complainant, or the faculty member, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under this rule;
- (e) The hearing committee or the hearing examiner shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules in s. UWS 4.19(1)(h);
- (f) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the hearing committee concerning its wishes in this regard. The function of legal counsel shall be to advise the hearing committee, consult with them on legal matters, and such other responsibilities as shall be determined by the hearing committee within the provisions of the rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under this policy;
- (h) Nothing in this section shall prevent the settlement of cases by mutual agreement between the university administration, the complainant, and the faculty member;
- (i) Delay or adjournment of the hearing for good cause may be granted. Good cause includes:
 - 1. The need to investigate evidence as to which a valid claim of surprise is made;
 - 2. To ensure the presence of the faculty member or the complainant, an advisor, or a witness;
 - 3. To provide language assistance or accommodation of disabilities; and
 - 4. To accommodate concurrent law enforcement activity.

UWS 4.21 Findings and recommendations to the chancellor. The hearing committee or hearing examiner shall simultaneously send to the chancellor, to the complainant, and to the faculty member concerned, within 30 days after the conclusion of the hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations.

UWS 4.22 Chancellor's decision. (1) Within 20 days after receipt of the record and findings and recommendations from the hearing committee or the hearing examiner, the chancellor shall review those materials and afford the faculty member and the complainant an opportunity to discuss them. The chancellor's decision shall be based on the record created before the hearing committee or the hearing examiner. The chancellor shall prepare a written decision within 20 days after completing the meetings with the faculty member and the complainant, unless the chancellor's proposed decision differs substantially from the recommendations of the hearing committee or hearing examiner. If the chancellor's proposed decision differs substantially from those recommendations, the chancellor shall promptly consult the hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a decision.

(2) The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations.

(3) The chancellor's decision shall be simultaneously sent to the faculty member concerned, the complainant, and to the hearing committee or the hearing examiner within 45 days of the chancellor's receipt of the hearing committee's or hearing examiner's materials. The chancellor's decision also shall be submitted through the president of the system to the board, accompanied by a copy of the hearing committee's or hearing examiner's findings and recommendations. The chancellor's decision and the findings and recommendations shall be forwarded through the president of the system to the board for its review.

UWS 4.23 Appeal to board.

(1) The board shall provide the faculty member and the complainant an opportunity for filing exceptions to the chancellor's decision, and for oral arguments, unless the faculty member and the complainant waive in writing the right to file exceptions and for oral arguments. The hearing of any oral arguments shall be closed unless the faculty member or the complainant requests an open hearing (see subch. V of ch. 19, Stats., Open Meeting Law).

(2) The faculty member or complainant may file written exceptions to the chancellor's decision, and the board shall conduct its review of the chancellor's decision, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter; or
3. The Title IX coordinator, investigator(s), the chancellor, the hearing examiner, or the hearing committee members had a conflict of interest or bias for or against the faculty member or complainant, or against complainants and respondents generally, that affected the outcome.

(3) If the board decides to take action different from the decision of the chancellor, then before taking final action the board shall consult with the chancellor.

(4) The board shall make its decision based on the record created before the hearing committee or hearing examiner. Within 60 days of receipt of the chancellor's decision, or otherwise as soon as practicable, the board shall simultaneously notify the faculty member and the complainant of the board's final decision, which shall include the board's rationale for its decision.

(5) A decision by the board ordering dismissal of a faculty member shall specify the effective date of the dismissal.

UWS 4.24 Suspension from duties. Pending the final decision on dismissal or other discipline, the faculty member shall not normally be relieved of duties; but if, after consultation with appropriate faculty committees the chancellor finds that substantial harm to the university may result if the faculty member is continued in the faculty member's position, the faculty member

may be relieved immediately of the faculty member's duties, but the faculty member's pay shall continue until a final decision as to dismissal, unless the chancellor also makes the determinations set forth in UWS 7.06 in which case the suspension from duties may be without pay and the procedures set forth in UWS 7.06 shall apply.

Chapter UWS 7

DISMISSAL OF FACULTY IN SPECIAL CASES

[UWS 7.01](#) Declaration of policy.

[UWS 7.015](#) Definitions.

[UWS 7.02](#) Serious criminal misconduct.

[UWS 7.03](#) Dismissal for cause.

[UWS 7.04](#) Reporting responsibility.

[UWS 7.05](#) Expedited process.

[UWS 7.06](#) Temporary suspension without pay.

UWS 7.01 Declaration of policy. University faculty members are responsible for advancing the university's missions of teaching, research and public service. The fulfillment of these missions requires public trust in the integrity of the institution and in all members of the university community. The university's effectiveness, credibility, and ability to maintain public trust are undermined by criminal activity that poses a substantial risk to the safety of others, that seriously impairs the university's ability to fulfill its missions, or that seriously impairs the faculty member's fitness or ability to fulfill ~~the faculty member's~~ ~~this or her~~ duties. Situations involving such serious criminal misconduct by faculty members must be addressed and resolved promptly to ensure that public trust is maintained and that the university is able to advance its missions. The Board of Regents therefore adopts the procedures in this chapter for identifying and responding to those instances in which a faculty member has engaged in serious criminal misconduct.

History: [CR 06-078](#): cr. [Register May 2007 No. 617](#), eff. 6-1-07; [2015 Wis. Act 330](#) s. 20: am. [Register April 2016 No. 724](#), eff. 5-1-16.

UWS 7.015 Definitions.

- (1) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."
- (2) ~~"Complainant"~~ **"Affected party"** means any ~~individual who is reported to have been subjected to sexual harassment, sexual assault, dating violence, domestic violence, or stalking as defined in s. UWS 4.015 student, employee, or visitor, or an individual participating in a university program or activity, who is a victim of serious criminal misconduct by a faculty member.~~
- (3) "Complaint" means an allegation against a faculty member reported to an appropriate university official.
- (4) "Consult" or "consulting" means thoroughly reviewing and discussing the relevant facts and discretionary issues.
- (5) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."
- (6) "Serious criminal misconduct" is defined in s. [UWS 7.02](#).

History: [CR 15-061](#): cr. [Register June 2016 No. 726](#), eff. 7-1-16; s. [35.17](#) correction in (2) [Register June 2016 No. 726](#).

UWS 7.02 Serious criminal misconduct.

- (1) In this chapter, "serious criminal misconduct" means:
 - (a) Pleading guilty or no contest to, or being convicted of a felony, in state or federal court, where one or more of the conditions in par. (b), (c), (d) or (e) are present, and the felony involves any of the following:
 1. Causing serious physical injury to another person.
 2. Creating a serious danger to the personal safety of another person.

3. Sexual assault.
4. Theft, fraud or embezzlement.
5. Criminal damage to property.
6. Stalking or harassment.
- (b) A substantial risk to the safety of members of the university community or others is posed.
- (c) The university's ability, or the ability of the faculty member's colleagues, to fulfill teaching, research or public service missions is seriously impaired.
- (d) The faculty member's fitness or ability to fulfill the duties of the faculty member's ~~his or her~~ position is seriously impaired.
- (e) The opportunity of students to learn, do research, or engage in public service is seriously impaired.
- (2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute serious criminal misconduct.
- (3) Except as otherwise expressly provided, a faculty member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. UWS 7.03 to 7.06.
- (4) Any act required or permitted by ss. UWS 7.03 to 7.06 to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies approved by the Board of Regents under s. UWS 2.02.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; 2015 Wis. Act 330 s. 20: am. (4) Register April 2016 No. 724, eff. 5-1-16.

UWS 7.03 Dismissal for cause.

- (1) Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the end of the ~~his or her~~ term of appointment only by the board and only for just cause and only after due notice and hearing.
- (2) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. UWS 7.02.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 7.04 Reporting responsibility. Any faculty member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS 7.02 (1) (a), in state or federal court, shall immediately report that fact to the chancellor.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 7.05 Expedited process.

- (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. UWS 7.04 or other credible information that a faculty member has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS 7.02 (1) (a), in state or federal court, the chancellor shall:
 - (a) Within 3 working days of receipt of the report or information, inform the faculty member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and to advise the chancellor as to whether to proceed under this section or ch. UWS 4. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, If the identify of an affected party is known to the university, the university shall make a reasonable attempts to notify the affected party of the report or information at the same time as the faculty member. the affected party complainant shall be notified by the chancellor of the receipt of the report or information at the same time as the faculty member.~~

- (b) Upon appointing an investigator and notifying the faculty member, afford the faculty member 3 working days in which to request that the investigator be disqualified on grounds of lack of impartiality or other cause. In the event that the chancellor determines that a request for disqualification should be granted, the chancellor shall, within 2 working days of the determination, appoint a different investigator. The faculty member shall have the opportunity to request that any second or subsequent investigators be disqualified on grounds of lack of impartiality or other cause. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant~~ An affected party known to the university shall have the disqualification rights that are afforded to the faculty member in this subsection.
- (2) The investigator shall complete and file a report with the chancellor not later than 10 working days following the investigator's appointment.
- (3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the faculty member pursuant to this chapter, to seek dismissal of the faculty member pursuant to ch. UWS 4, to seek an alternative disciplinary sanction, or to discontinue the proceedings. ~~The charges shall be served on the faculty member in the manner specified in s. UWS 4.02 (3).~~
- (a) If the chancellor decides to seek dismissal of the faculty member pursuant to this chapter, the chancellor shall file charges within 2 working days of reaching the decision.
- (b) If the chancellor decides to seek dismissal of the faculty member pursuant to ch. UWS 4, the chancellor shall file charges and proceed in accordance with the provisions of that chapter and implementing institutional policies. If, during the course of such proceedings under ch. UWS 4, the chancellor receives a report under s. UWS 7.04 or other credible information that the faculty member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. UWS 7.02 (1) (a), and one or more of the conditions listed in s. UWS 7.02 (1) (b) through (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this chapter.
- (c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 6 and UWS 4, and implementing institutional policies, shall be followed.
- (4) If charges seeking dismissal are filed under sub. (3) (a), the faculty member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 4.03. The hearing shall provide the procedural guarantees enumerated under ss. UWS 4.05 to 4.06, except that the hearing shall be concluded, and written findings and a recommendation to the chancellor shall be prepared, within 15 working days of the filing of charges.
- (5)
- (a) Within 3 working days of receipt of the findings and recommendation of the committee under sub. (4), the chancellor shall prepare a written recommendation on the matter.
- (b) If the recommendation is for dismissal, the chancellor shall transmit it to the board for review.
- (c) Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the board at its option grants a review on the record at the request of the faculty member. The faculty member shall receive a copy of the chancellor's final decision. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant~~ If the identity of the An an affected party is known to the university, the university shall make a reasonable attempt to shall receive provide the affected party a copy of the chancellor's final decision at the same time as the faculty member ~~and shall have the same right to a review on the record as the faculty member.~~
- (6) Upon receipt of the chancellor's recommendation, the full board shall review the record before the institutional hearing committee, and shall offer an opportunity for filing exceptions to the recommendation, and for oral argument. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant s~~ An affected party known to the university shall have all the rights provided to the faculty member in this paragraph. The full board shall issue its decision on the matter within 15 working days of receipt of the chancellor's recommendation. If the identitfy of an affected party

is known to the university, the board shall make a reasonable attempts to notify the affected party of its decision at the same time as the faculty member.

- (7) If a faculty member whose dismissal is sought under sub. (3) (a) does not proceed with the hearing before the institutional hearing committee as provided in sub. (4), the board shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.
- (8) The administration or its representatives shall have the burden of proof to show that just cause exists for dismissal under this chapter. The administration must demonstrate by clear and convincing evidence that the faculty member engaged in serious criminal misconduct, as defined in s. UWS 7.02, ~~except in cases involving sexual assault, dating violence, domestic violence, or stalking, in which the evidentiary standard shall be by a preponderance of the evidence.~~
- (9) The chair of the faculty hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 15-061: am. (1) (a), (b), (5) (c), (6), r. and recr. (8) Register June 2016 No. 726, eff. 7-1-16.

UWS 7.06 Temporary suspension without pay.

- (1) The chancellor, after consulting with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to ~~his or her~~ dismissal where:
 - (a) The faculty member has been charged with a felony of a type listed in s. UWS 7.02 (1) (a) and the chancellor, after following the provisions of s. UWS 7.05 (1) through (3), finds, in addition, that there is a substantial likelihood 1) that one or more of the conditions listed in s. UWS 7.02 (1) (b) through (e) are present, and 2) that the faculty member has engaged in the conduct as alleged; or
 - (b) The faculty member is unable to report for work due to incarceration, conditions of bail or similar cause; or
 - (c) The faculty member has pleaded guilty or no contest to or been convicted of a felony of a type listed in s. UWS 7.02 (1) (a) and one or more of the conditions listed in s. UWS 7.02 (1) (b) through (e) are present.
- (2) If the chancellor finds that the conditions in sub. (1) are present, he or she shall immediately notify the faculty member, in writing, of the intent to impose a suspension without pay, and shall, within 2 working days, provide the faculty member with an opportunity to be heard with regard to the matter. The faculty member may be represented by counsel or another at this meeting.
- (3) If, after affording the faculty member the opportunity to be heard, the chancellor determines to suspend without pay, the chancellor shall inform the faculty member of the suspension, in writing. The chancellor's decision to suspend without pay under this section shall be final, except that:
 - (a) If the chancellor later determines that the faculty member should not be dismissed, the chancellor may discontinue the proceedings, or may recommend a lesser penalty to the board, and, except as provided in par. (c), shall order the payment of back pay for any period of the suspension for which the faculty member was willing and able to report for work.
 - (b) If the board later determines that the faculty member should not be dismissed, the board may order a lesser penalty and shall order the payment of back pay for any period of the suspension for which the faculty member was willing and able to report for work.
 - (c) If the chancellor or board later determines, under par. (a) or (b), to recommend or impose as a lesser penalty the suspension of the faculty member without pay, then any period of suspension without pay so recommended or ordered shall be offset by the period of any suspension without pay actually served by the faculty member.
- (4) If, after affording the faculty member the opportunity to be heard, the chancellor determines that the conditions in sub. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 4.09 shall apply.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

Chapter UWS 11

DISMISSAL OF ACADEMIC STAFF FOR CAUSE AND FOR DISCIPLINE AND DISMISSAL IN TITLE IX CASES

UWS 11.01 Dismissal for cause-indefinite academic staff appointments.

UWS 11.015 Definition.

UWS 11.02 Responsibility for charges.

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UWS 11.23 Hearing committee or hearing examiner findings and recommendations to the chancellor.

UWS 11.24 Chancellor's decision.

UWS 11.25 Appeal to board.

UWS 11.26 Suspension from duties in Title IX misconduct dismissal cases.

UWS 11.01 Dismissal for cause-indefinite academic staff appointments.

(1) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under ss. UWS 11.02 through 11.106 or for reasons of budget or program under ch. UWS 12.

(2) The board's policy is that members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy

shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.

(3) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. UWS 11.102.

~~(4) Indefinite appointment academic staff dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in UWS 11.14(–) shall be governed by UWS 11.13(–) to UWS 11.26(–). UWS 11.01 to UWS 11.12 shall not apply to academic staff dismissal based on Title IX misconduct.~~

History: Cr. Register, October, 1975, No. 236, eff. 11-1-75; CR 06-078: am. (1), cr. (3) Register May 2007, No. 617, eff. 6-1-07.

UWS 11.015 Definition. The following terms shall have the meaning given below and shall apply to UWS 11.01 through UWS 11.12:

(1) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."

~~(2) "Complainant" means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation as defined in this section. sexual misconduct, as defined in UWS 11.14. means any individual who is reported to have been subject to sexual harassment, sexual assault, dating violence, domestic violence, or stalking, as defined in this section subs. (5), (6), (9), (10), and (11).~~

(3) "Complaint" means an allegation against an academic staff member reported to an appropriate university official.

(4) "Consult" or "consulting" means thoroughly reviewing and discussing the relevant facts and discretionary issues.

~~(5) "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. violence committed by an employee against another person with whom they are in a "dating relationship" as defined in s., Stats.~~

~~(6) "Domestic violence" means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075). conduct defined as "domestic abuse" in ss. and , Stats.~~

(7) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."

(8) "Reporting Party" means one or more individuals or groups filing a complaint as defined in sub. (3). A reporting party may also be a complainant as defined in sub. (2).

~~(9) "Sexual harassment" means conduct defined in s. 111.32, Stats~~ conduct on the basis of sex that satisfies one or more of the following:

- a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct;
- b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal "reasonable person" standard:
 - 1. Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity; or
 - 2. Is so severe or, pervasive, or and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in a university sponsored or supported activity, n institution's education program or activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.-

(10) "Sexual assault" means ~~conduct defined in s. 940.225, Stats~~ an offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).

- a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- b) Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)

Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.).

(11) "Stalking" means ~~conduct defined in s. 940.32, Stats.~~ engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

(12) "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in this section. A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

(13) "Incapacitation" means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

(14) "Sexual exploitation" occurs when an individual attempts, takes or threatens to take, nonconsensual sexual advantage of another person. Examples include, but are not limited to:

- a) Without the knowledge and consent of all participants –
 - 1) observing, recording, or photographing private body parts or sexual activity of the complainant(s);
 - 2) allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant(s); or
 - 3) otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant(s);
- b) Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing the complainant to do the same.
- c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity;
- d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity;
- e) Coercing the complainant to engage in sexual activity for money or anything of value;
- f) Threatening distribution of the following, to coerce someone into sexual activity or to providing money or anything of value:
 - 1) Photos, videos, or recordings depicting private body parts or sexual activity of the complainant(s), or
 - 2) Other information of a sexual nature involving the complainant (for example, may include but is not limited to, sexual history or sexual orientation).

History: CR 06-078: cr. Register May 2007, No. 617, eff. 6-1-07; CR 15-059: r. and recr. Register June 2016 No. 726, eff. 7-1-16; correction in (2), (8) made under 35.17, Stats., Register June 2016 No. 726.

UWS 11.02 Responsibility for charges.

(1) Whenever the chancellor of an institution receives an allegation which concerns an academic staff member holding an indefinite appointment which appears to be substantial and which, if true, might lead to dismissal under s. UWS 11.01, the chancellor shall request within a reasonable time that the appropriate dean, director, or designee investigate the allegation. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the chancellor shall direct the Title IX Coordinator, or designee, to initiate an investigation in accordance with applicable policies. The dean, director, or designee shall offer to discuss it informally with the academic staff member, and, if the allegation involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation or stalking, with the complainant and provide information of rights under this chapter. Both the academic staff member and the complainant shall have the right to be accompanied by an advisor of their choice at any meeting or proceeding that is part of the institutional disciplinary process. If such an investigation and discussion does not result in a resolution of the allegation and if the allegation is deemed sufficiently serious to warrant dismissal, the dean, director, or designee shall prepare a written statement of specific charges. A member of the academic staff may be dismissed only after receipt of such a statement of specific charges and, if a hearing is requested by the academic staff member, after a hearing held in accordance with the provisions of this chapter and the subsequently adopted procedures of the institution. If the staff member does not request a hearing, dismissal action shall proceed along normal administrative lines but the provisions of ss. UWS 11.02, 11.08, and 11.09 shall apply. In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid

potential prejudice, designate an appropriate administrative officer to act for the dean or director under this section.

(2) Any formal statement of specific charges shall be served personally, by electronic means, or by certified mail, return receipt requested. If such service cannot be made within 20 days, service shall be accomplished by first class mail and by publication as if the statement of charges were a summons and the provisions of s. 801.11 (1) (c), Stats., were applicable. Such service by mailing and publication shall be effective as of the first insertion of the notice of statement of charges in the newspaper. If the formal statement of specific charges involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation or stalking, the formal statement shall be provided to the complainant upon request, except as may be precluded by applicable state or federal law.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; 2015 Wis. Act 330: am. (2) Register April 2016 No. 724, eff. 5-1-16; CR 15-059: am. (1), (2) Register June 2016 No. 726, eff. 7-1-16; merger of (2) treatments by 2015 Wis. Act 335 and CR 15-059 under s. 13.92 (4) (bm), Stats., Register September 2016 No. 729.

UWS 11.03 Hearing body.

(1) The chancellor of each institution shall provide for a hearing body charged with hearing dismissal cases and making a report and recommendations under this chapter. Throughout this chapter, the term “hearing body” is used to indicate either a hearing committee or a hearing examiner as designated in the institutional procedures. This hearing body shall operate as the hearing agent for the chancellor pursuant to s. 227.46 (4), Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of fact and decision to the chancellor according to s. UWS 11.07.

(2) With the concurrence of the faculty and the academic staff advisory committee of each institution, the chancellor may provide that dismissal for cause of a member of the academic staff having teaching responsibilities may be heard by the hearing body specified in s. UWS 4.03. If so provided, the hearing shall be held pursuant to the provisions of ch. UWS 11.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.

UWS 11.04 Hearing. If the staff member requests a hearing within 20 days from the service of the statement of charges (25 days if notice is by first class mail and publication), such hearing shall be held not later than 20 days after the request, except that this time limit may be extended by mutual consent of the parties or by order of the hearing body. The request for a hearing shall be addressed in writing to the hearing body established pursuant to s. UWS 11.03. Service of written notice of hearing on the specific charges shall be provided at least 10 days prior to the hearing.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.

UWS 11.05 Adequate due process.

(1) Each institution shall develop policies and procedures to provide for a fair hearing upon request in the event of dismissal. A fair hearing for an academic staff member whose dismissal is sought under s. UWS 11.01 shall include the following:

(a) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;

(b) A right to be heard in ~~his or her~~ their defense;

(c) A right to an advisor, counsel, or other representative, and to offer witnesses;

(d) A right to confront and cross-examine adverse witnesses. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the hearing committee may reasonably restrict the academic staff member and the complainant from questioning each other;

(e) A verbatim record of all hearings, which might be a sound recording, provided at no cost;

(f) Written findings of fact and decision based on the hearing record;

(g) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.

(2) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have all the rights provided to the academic staff member in s. UWS 11.05 (1) (a) to (g), except as may be precluded by applicable state or federal law.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction in (1) (g) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617; CR 15-059: am. (1) (c), (d), cr. (2); Register June 2016 No. 726; correction in (2) under 35.17, Stats., Register June 2016 No. 726, eff. 7-1-16.

UWS 11.06 Procedural guarantees.

(1) The following requirements shall also be observed:

(a) Any person who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall not be qualified to participate as a member of the hearing body;

(b) The hearing shall be closed unless the staff member under charges requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., Open Meeting Law);

(c) The hearing body shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges;

(d) The burden of proof of the existence of just cause is on the administration or its representatives;

(dm) For complaints of sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the standard of proof shall be a preponderance of the evidence;

(e) If a staff member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit;

(f) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration and the staff member, with the chancellor's approval, at any time prior to a final decision by the chancellor; or when appropriate, with the board's approval prior to a final decision by the board;

(g) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

(2) If the institutional policies and procedures provide that dismissal cases be heard by a hearing committee, the following requirements shall be observed:

- (a) The committee may, on motion of either party, and, if the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, on the motion of the complainant, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of replacements equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the policies and procedures adopted by the institution;
- (b) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel shall be to advise the committee, consult with them on legal matters, and such other responsibilities as shall be determined by the committee within the provisions of the policies and procedures adopted by the institution.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 15-059: cr. (1) (dm), am. (1) (f), (2) (a) Register June 2016 No. 726, eff. 7-1-16.

UWS 11.07 Recommendations: to the chancellor. The hearing body shall send to the chancellor and to the academic staff member concerned, as soon as practicable after conclusion of a hearing, a verbatim record of the testimony and a copy of its report, findings, and recommendations. After reviewing the matter on record and considering arguments if submitted by the parties, the chancellor shall issue a decision. In that decision, the chancellor may order dismissal of the academic staff member, may impose a lesser disciplinary action, or may find in favor of the academic staff member. The academic staff member shall be notified of the chancellor's decision in writing. In cases involving sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall be notified of the chancellor's decision at the same time as the academic staff member. This decision shall be deemed final unless the board, upon request of the academic staff member, grants review based on the record. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have all rights provided to the academic staff member in this paragraph.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 15-059: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 11.08 Suspension from duties. Pending the final decision as to dismissal, the academic staff member with an indefinite appointment shall not be relieved of duties, except where, after consulting with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in their his or her position. Where such determination is made, the staff member may be relieved of their his or her position immediately, or be assigned to another administrative unit, but their his or her salary shall continue until the chancellor makes a decision as to dismissal, unless the chancellor also makes the determinations set forth in s. UWS 11.105 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 11.105 shall apply.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 06-078: am. Register May 2007 No. 617, eff. 6-1-07.

UWS 11.09 Date of dismissal. A decision by the chancellor ordering dismissal shall specify the effective date of the dismissal.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.

UWS 11.10 Board review. A member of the academic staff on indefinite appointment who has been dismissed for cause by the chancellor following a hearing may appeal this action to the board. Any appeal must be made within 30 days of the date of the decision of the chancellor to dismiss. Upon receiving an appeal the board shall review the case on the record. Following such review the board may confirm the chancellor's decision, or direct a different decision, or approve a further hearing before the board with an opportunity for filing exceptions to the hearing body's recommendations or the chancellor's decision and for oral argument on the record. If further review with opportunity for oral argument on the record is provided, this review shall be closed unless the staff member requests an open hearing. (See subch. V of ch. 19, Stats., Open Meeting Law.) All decisions of the board, whether after review on the record or after oral argument, shall be expressed in writing and shall indicate the basis for such decision. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have the same opportunity to appeal, file exceptions to the recommendations of the hearing committee or chancellor, and oral arguments, as provided to the academic staff member.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 15-059: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 11.101 Dismissal for cause in special cases - indefinite academic staff appointments. A member of the academic staff holding an indefinite appointment may be dismissed for serious criminal misconduct, as defined in s. UWS 11.102.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 11.102 Serious criminal misconduct.

(1) In this chapter, "serious criminal misconduct" means:

(a) Pleading guilty or no contest to, or being convicted of a felony, in state or federal court, where one or more of the conditions in par. (b), (c), (d), or (e) are present, and the felony involves any of the following:

1. Causing serious physical injury to another person.
2. Creating a serious danger to the personal safety of another person.
3. Sexual assault.
4. Theft, fraud or embezzlement.
5. Criminal damage to property.
6. Stalking or harassment.

(b) A substantial risk to the safety of members of the university community or others is posed.

(c) The university's ability, or the ability of the academic staff member's colleagues, to fulfill teaching, research or public service missions is seriously impaired.

(d) The academic staff member's fitness or ability to fulfill the duties of their-~~his or her~~ position is seriously impaired.

(e) The opportunity of students to learn, do research, or engage in public service is seriously impaired.

(2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute serious criminal misconduct.

(3) Except as otherwise expressly provided, an academic staff member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. UWS 11.103 to 11.106.

(4) Any act required or permitted by ss. UWS 11.103 to 11.106 to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies forwarded to the Board of Regents under s. UWS 9.02.

(5) "Affected party" means any student, employee, or visitor, or an individual participating in a university program or activity, who is a victim of serious criminal misconduct by an academic staff member.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; 2015 Wis. Act 330 s. 20: am. (4) Register April 2016 No. 724, eff. 5-1-16.

UWS 11.103 Reporting responsibility. Any academic staff member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS 11.102 (1) (a), in state or federal court, shall immediately report that fact to the chancellor.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 11.104 Expedited process.

(1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. UWS 11.103 or other credible information that an academic staff member holding an indefinite appointment has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS 11.102 (1) (a), in state or federal court, the chancellor shall:

(a) Within 3 working days of receipt of the report or information, inform the academic staff member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and advise the chancellor as to whether to proceed under this section or ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.265. If the identity of an affected party is known to the university, the university shall make a reasonable attempt to notify the affected party of the report or information at the same time as the academic staff member. ~~For cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant shall be notified by the chancellor of the receipt of the report or information at the same time as the academic staff member.~~

(b) Upon appointing an investigator and notifying the academic staff member, afford the academic staff member three working days in which to request that the investigator be disqualified on grounds of lack of impartiality or other cause. In the event that the chancellor determines that a request for disqualification should be granted, the chancellor shall, within 2 working days of the determination, appoint a different investigator. The academic staff member shall have the opportunity to request that any second or subsequent investigators be disqualified on grounds of lack of impartiality or other cause. ~~For cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant shall have the disqualification rights that are afforded to the academic staff member in this subsection.~~

(2) The investigator shall be complete and file a report with the chancellor not later than 10 working days following the investigator's appointment.

(3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the academic staff member

pursuant to ss. UWS 11.101 to 11.106, to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10, ~~to seek dismissal of the academic staff member pursuant to ss. UWS 11.13 to 11.26,~~ to seek an alternative disciplinary sanction, or to discontinue the proceedings. ~~The charges shall be served on the academic staff member in the manner specified in s. UWS 11.02 (2).~~

(a) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.101 to 11.106, the chancellor shall file charges within 2 working days of reaching the decision.

(b) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10 ~~or UWS 11.13 to 11.26,~~ the chancellor shall proceed in accordance with the provisions of those sections of this chapter and implementing institutional policies. If, during the course of proceedings under ss. UWS 11.02 to 11.10 ~~or ss. UWS 11.13 to 11.26,~~ the chancellor receives a report under s. UWS 11.103 or other credible information that the academic staff member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. UWS 11.102 (1) (a), and one or more of the factors listed in s. UWS 11.102 (1) (b) through (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this section.

(c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 13 ~~or ss. UWS 11.13 to 11.26,~~ and implementing institutional policies, shall be followed.

(4) ~~If~~ charges seeking dismissal are filed under sub. (3) (a), the academic staff member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 11.03. The hearing shall provide the procedural guarantees enumerated under ss. UWS 11.05 to 11.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.

(5) Within 3 working days of receipt of the findings and recommendation of the committee under sub. (4), the chancellor shall prepare a written decision on the matter. In the decision, the chancellor may order dismissal of the staff member, may impose a lesser disciplinary action, or may find in favor of the staff member. The staff member shall be notified of the chancellor's decision in writing. ~~In cases involving sexual harassment or Title IX misconduct sexual assault, dating violence, domestic violence, or stalking, the complainant shall be notified of the chancellor's decision at the same time as the staff member. If the identity of an affected party is known to the university, the university shall make a reasonable attempt to provide the affected party a copy of the chancellor's final decision at the same time as the academic staff member.~~

This decision shall be deemed final unless the board, upon request of the academic staff member, grants a review based on the record. ~~In cases involving sexual harassment or Title IX misconduct sexual assault, dating violence, domestic violence, or stalking, the complainant shall have the same right to a review on the record as the academic staff member.~~

(6) The administration or its representatives shall have the burden of proof to show that just cause exists for dismissal under this chapter. The administration must demonstrate by clear and convincing evidence that the academic staff member engaged in serious criminal misconduct, as defined in s. UWS 11.102, ~~except in cases of sexual harassment or Title IX misconduct sexual assault, dating violence, domestic violence, or stalking, in which the evidentiary standard shall be by a preponderance of the evidence.~~

(7) The chair of the academic staff hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 15-059: am. (1) (a), (b), (5), r. and recr. (6) Register June 2016 No. 726, eff. 7-1-16.

UWS 11.105 Temporary suspension from duties without pay.

(1) The chancellor, after consulting with appropriate academic staff governance representatives, may suspend an academic staff member holding an indefinite appointment from duties without pay pending the final decision as to ~~his or her~~ dismissal where:

- (a) The academic staff member has been charged with a felony of a type listed in s. UWS 11.102 (1) (a) and the chancellor, after following the provisions of s. UWS 11.104 (1) through (3), finds, in addition, that there is a substantial likelihood 1) that one or more of the conditions listed in s. UWS 11.102 (1) (b) through (e) are present, and 2) that the academic staff member has engaged in the conduct as alleged; or
- (b) The academic staff member is unable to report for work due to incarceration, conditions of bail or similar cause; or
- (c) The academic staff member has pleaded guilty or no contest to or been convicted of a felony of the type listed in s. UWS 11.102 (1) (a) and one or more of the conditions in s. UWS 11.102 (1) (b) through (e) are present.

(2) If the chancellor finds that the conditions in sub. (1) are present, he or she shall immediately notify the academic staff member, in writing, of the intent to impose a suspension without pay, and shall, within 2 working days, provide the academic staff member with an opportunity to be heard with regard to the matter. The academic staff member may be represented by counsel or another at this meeting.

(3)

(a) If, after affording the academic staff member the opportunity to be heard, the chancellor determines to suspend without pay, the chancellor shall inform the academic staff member of the suspension, in writing. The chancellor's decision to suspend without pay under this section shall be final, except that:

(b) If the chancellor later determines that the academic staff member should not be dismissed the chancellor may discontinue the proceedings, or may impose a lesser penalty, and except as provided in par. (c), shall order the payment of back pay for any period of the suspension for which the academic staff member was willing and able to report for work;

(c) If the chancellor later determines, under par. (a) or (b), to recommend or impose as a lesser penalty the suspension of the academic staff member without pay, then any period of suspension without pay so recommended or ordered shall be offset by the period of any suspension without pay actually served by the academic staff member.

(4) If, after affording the academic staff member the opportunity to be heard, the chancellor determines that the conditions in sub. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 11.08 shall apply.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 11.106 Board review. A member of the academic staff on an indefinite appointment who has been dismissed for serious criminal misconduct may appeal this action to the board as provided in s. [UWS 11.10](#). If the identity of an affected party is known to the university, the board shall make a reasonable attempt to notify the affected party of its decision at the same time as the academic staff member.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 11.11 Dismissal for cause-fixed term or probationary academic staff appointments. A member of the academic staff holding a probationary appointment, or a member of the academic staff holding a fixed term appointment and having completed an initial specified period of time, may be dismissed prior to the end of the contract term only for just cause or for reasons of budget or program under ch. [UWS 12](#). A nonrenewal of such an appointment is not a dismissal under this section. A dismissal shall not become effective until the individual concerned has received a written notification of specific charges and has been offered an opportunity for a hearing before the appropriate dean or director or his/her designee. If such hearing is requested, a determination of just cause and notification of dismissal shall be made by the dean or director or designee. If no hearing is requested the dismissal is effected by the specifications in the original notification of charges. The hearing before the dean, director, or designee shall provide the academic staff member with an opportunity to present evidence and argument concerning the allegations. Dismissal shall be effective immediately on receipt of written notification of the decision of the dean or director or designee unless a different dismissal date is specified by the dean or director. Dismissals for cause shall be appealable by filing an appeal with the hearing body established under s. [UWS 11.03](#). The burden of proof as to the existence of just cause on appeal shall be on the administration or the authorized official. The provisions of s. [UWS 11.04](#), procedural guarantees, contained in ss. [UWS 11.05](#) and [11.06](#) and the review provisions of s. [UWS 11.07](#), shall be applicable to the appeal proceeding. In no event, however, shall a decision favorable to the appellant extend the term of the original appointment. If a proceeding on appeal is not concluded before the appointment expiration date, the academic staff member concerned may elect that such proceeding be carried to a final decision. Unless such election is made in writing, the proceeding shall be discontinued at the expiration of the appointment. If the chancellor ultimately decides in favor of the appellant, salary lost during the interim period between the effective date of dismissal and the date of the chancellor's decision or the end of the contract period, whichever is earlier, shall be restored. In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid potential prejudice, designate an appropriate administrative officer to act for the dean or director under this section. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the complainant shall have all procedural rights provided to the academic staff member in this section and the standard of proof shall be by a preponderance of the evidence.- Dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in UWS 11.14 shall be governed by UWS 11.13 to UWS 11.26.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 15-059: am. Register June 2016 No. 726, eff. 7-1-16.

UWS 11.12 Dismissal for cause-teaching members of the academic staff. The policies and procedures of each institution may provide that dismissal for cause of a member of the academic staff having teaching responsibilities and holding a probationary appointment or a fixed term appointment may proceed under ss. [UWS](#)

11.02 to 11.10. If the institutional policies and procedures do not specifically make such provisions, dismissal for cause shall be made pursuant to s. UWS 11.11. Dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in UWS 11.14 shall be governed by UWS 11.13 to UWS 11.26.

UWS 11.13 Dismissal for cause or lesser discipline for Title IX misconduct. (1) The board may dismiss an academic staff member for cause, or impose lesser discipline on an academic staff member, for Title IX misconduct as those terms are defined in s. UWS 11.14 ,:-

(2) Title IX misconduct allegations against academic staff shall follow the disciplinary procedure in s. UWS 11.13 – s. UWS 11.26. An academic staff member may be dismissed only for just cause and may otherwise be disciplined only after due notice and hearing.

(3) The board's policy is that members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy shall be observed in determining whether or not just cause for dismissal, or grounds for other discipline, exists. The burden of proof of the existence of just cause for a dismissal, or grounds for other discipline, is on the administration.

(4) The academic staff member is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process. The burden of proof of the existence of just cause for a dismissal, or grounds other discipline, is on the university administration.

UWS 11.14 Definitions.

As used in s. UWS 11.13-11.26, the following terms shall have the meaning given below:

(1) “Complainant” means means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.~~any individual who is alleged to be the victim of conduct that could constitute sexual harassment, sexual assault, dating violence, domestic violence, or stalking, as defined in this section.~~

(2) “Consent” means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definition of sexual assault in this section. A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

(3) “Consult” or “consulting” means thoroughly reviewing and discussing the relevant facts and discretionary issues.

(4) “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(5) “Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of

Wisconsin. (See ss. 813.12(1)(am) and 968.075)

(6) “Education program or activity” means, for purposes of Title IX misconduct only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the misconduct occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

(7) “Formal complaint” is, for the purposes of a Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against an academic staff member and requesting that the institution investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

(8) “Incapacitation” means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person’s decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

(9) “Preponderance of the evidence” means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than “clear and convincing evidence.”

(10) “Respondent” means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.

(11) “Sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).

- a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- b) Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
- d) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)

(12) “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct;

b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard:

Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.

(13) “Stalking” means engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

(14) “Title IX misconduct” means sexual harassment, sexual assault, stalking, dating violence, or domestic violence as defined in this section.

UWS 11.15 Application of Title IX misconduct disciplinary procedure. This disciplinary procedure for Title IX misconduct will be used only when all of the following requirements are met:

(1) There is a complaint alleging Title IX misconduct on the basis of sex.

(2) The conduct occurred in the United States.

(3) The conduct occurred within the university’s programs or activities.

(4) The complainant must be participating in or attempting to participate in the education program or activity of the university at the time of filing the complaint.

(5) The complainant or Title IX Coordinator have submitted a written formal complaint.

UWS 11.16 Dismissal of formal Title IX complaint and related appeal. (1) The university must dismiss formal complaints consisting of allegations that:

(a) Would not constitute Title IX misconduct if proved;

(b) Did not occur in a university education program or activity; or

(c) Did not involve actions against someone physically located in the United States.

(2) The university may dismiss formal complaints when:

(a) The complainant formally requests in writing to withdraw the formal complaint;

(b) The academic staff member is no longer employed by the university; or

(c) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal complaint.

(3) The university generally shall decide whether to dismiss a formal complaint within 30 days of receipt of the formal complaint, but the university may extend that timeline as necessary. If a formal complaint

is dismissed, then the university must provide notice of the dismissal and reasons therefore to the academic staff member and complainant in writing.

(4) Within 20 days of receipt of the notice of dismissal, the complainant or academic staff member may appeal the dismissal by filing a written appeal with the chancellor. The complainant or academic staff member may appeal on the following bases:

- (a) Procedural irregularity that affected the outcome of the matter;
- (b) New evidence that was not reasonably available at the time of the dismissal that could affect the outcome of the matter; or
- (c) The university employee making the dismissal decision had a conflict of interest or bias for the academic staff member or against the complainant, or against complainants or respondents generally, that affected the dismissal decision.

(5) The chancellor shall provide the academic staff member and complainant the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor shall simultaneously issue a decision to the complainant and the academic staff member within 30 days of receipt of a written appeal. The chancellor's decision on the appeal of a dismissal shall be final.

(6) Title IX formal complaint does not preclude the university from otherwise pursuing discipline or dismissal against the academic staff member under other administrative rules or university policies.

UWS 11.17 Investigation of Title IX misconduct allegations. (1) Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.

(2) The investigator shall provide the academic staff member and the complainant with a notice of investigation. The notice must include:

- (a) The grievance process, including informal resolution options;
- (b) The allegations of Title IX misconduct with sufficient detail for the academic staff member to prepare a response to the allegations, including but not limited to, the identity of the complainant as well as the date and location of the incident(s) if available;
- (c) A statement affirming the academic staff member is presumed not responsible for the alleged violation until the disciplinary process finds otherwise;
- (d) The academic staff member and complainant have the right to an advisor of their choice;
- (e) The academic staff member and complainant have the right to inspect and review the evidence; and
- (f) Information about any code of conduct rules which prohibit the academic staff member or the complainant from knowingly making false statements or submitting false information during the disciplinary process.

(3). The parties must receive an amended notice of investigation any time additional charges are added during the course of an investigation. Formal complaints involving more than one complainant or respondent may be consolidated if they arise out of the same facts or circumstances.

(4) The university's investigator must:

- (a) Provide both the academic staff member and the complainant an equal opportunity to provide witnesses (including fact and expert witnesses) who may be interviewed by the investigators and other inculpatory and exculpatory evidence;
- (b) Not restrict the ability of either the academic staff member or complainant to discuss the allegations under investigation or to gather and present relevant evidence;
- (c) Provide the academic staff member and complainant the same opportunity to be accompanied by an advisor of their choice during meetings relating to the investigation but may limit the participation by the advisor so long as those limits are applied equally;
- (d) Provide both the academic staff member and the complainant an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from an academic staff member, complainant, or other source, so that the academic staff member and complainant can meaningfully respond to the evidence prior to conclusion of the investigation.

(5) As part of its investigation and disciplinary process, the university cannot access, consider, disclose, or otherwise use an academic staff member's or complainant's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the academic staff member or complainant, unless the university obtains the academic staff member's or complainant's voluntary, written consent to do so in relation to the investigation and disciplinary process.

(6) The university's investigator generally shall complete the investigation and issue a final investigative report within 90 days of the investigator's appointment. However, the investigator may extend the investigation's time frame where circumstances warrant.

UWS 11.18 Review of evidence. (1) Prior to completion of the final investigative report, the investigator must send to the academic staff member and complainant and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the academic staff member and the complainant. The evidence may be provided in an electronic format or a hard copy. The evidence provided includes evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from the academic staff member, complainant or other source to permit the academic staff member and complainant to meaningfully respond to the evidence prior to conclusion of the investigation.

(2) The academic staff member and the complainant must have at least 10 days to submit a written response to the evidence. The investigator will consider any written responses prior to completion of the final investigative report.

UWS 11.19 Final investigative report. The investigator must create a final investigative report that fairly summarizes relevant evidence and send the report to the academic staff member and complainant, and their advisors, if any, for their review and response at least 10 days prior to a hearing. The written report shall be delivered simultaneously to the academic staff member and complainant. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless the academic staff member and the complainant both waive, in writing, the right to such a hearing.

UWS 11.20 Standing academic staff committee and hearing examiner. (1) The chancellor of each university, in consultation with academic staff representatives, shall adopt policies providing for the designation of a Title IX misconduct hearing examiner (“hearing examiner”). A hearing examiner shall be selected by the chancellor pursuant to these policies to hear academic staff dismissal and discipline cases. Additionally, the academic staff of each university shall provide a standing committee (“hearing committee”) charged with hearing academic staff dismissal and discipline cases. The chancellor shall appoint the presiding member of the hearing committee, who may be a hearing examiner. The university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

(2) The hearing committee or the hearing examiner shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held not later than 45 days after completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner.

UWS 11.21 Hearing process. (1) A fair hearing for an academic staff member against whom dismissal or other discipline is sought shall include the following:

- (a) Service of written notice of a live hearing on the allegations in the formal complaint at least 10 days prior to the hearing;
- (b) A right to the names of witnesses and of access to documentary and other evidence upon the basis of which dismissal or other discipline is sought;
- (c) A right for the complainant and academic staff member to be heard on their own behalf;
- (d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The academic staff member’s or complainant’s advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person’s status as a complainant, respondent, or witness. If the academic staff member or complainant does not have an advisor, the university shall provide the academic staff member or complainant, without charge, an advisor of the university’s choice to conduct cross-examination on behalf of the academic staff member or complainant. The advisor may be an attorney;
- (e) A right to confront and cross-examine adverse witnesses. Cross examination must be conducted directly, orally, and in real time by the academic staff member’s or complainant’s advisor. The academic staff member and the complainant shall not be permitted to personally conduct cross

examination. If the academic staff member, the complainant, or a witness does not submit to cross-examination at the hearing, the hearing committee or the hearing examiner must not rely on any statement of the academic staff member, complainant, or witness in reaching its findings and recommendations. However, the hearing committee or hearing examiner shall not draw a negative inference in reaching its findings and recommendations based solely on the absence of an academic staff member, complainant, or witness from the hearing or refusal to answer cross-examination or other questions;

(f) A verbatim record of all hearings, which might be a sound recording, made available at no cost for inspection and review;

(g) Written findings of fact supporting the decision based on the hearing record. The written findings of fact and decision must include:

1. Identification of the allegations potentially constituting Title IX misconduct-;

2. A description of the procedural steps taken from the receipt of the formal complaint through the hearing committee's or hearing examiner's decision, including any notifications to the academic staff member and the complainant, interviews with the academic staff member, the complainant, and witnesses, site visits, methods used to gather evidence, and hearings held;

3. Conclusions regarding the application of the university's conduct rules and policies to the facts; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction recommended to be imposed, and whether remedies designed to restore or preserve equal access to the university's educational program or activity will be provided to the complainant; and

4. The university's procedures and permissible bases for the complainant and academic staff member to appeal.

(h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats. Only relevant questions may be asked of the academic staff member, the complainant, and any witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the academic staff member committed the conduct alleged by the complainant, or unless the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the academic staff member and are offered to prove consent;

(i) Upon the academic staff member's or complainant's request, the university shall provide for the hearing to occur with the academic staff member and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the academic staff member, and the complainant to simultaneously see and hear witnesses answering questions.

(2) The complainant shall have all the rights provided to the academic staff member in sub. (1) (a) to (i).

UWS 11.22 Procedural guarantees. (1) Any hearing held shall comply with the requirements set forth in the preceding section. The following requirements shall also be observed:

(a) The burden of proof of the existence of just cause to support dismissal, or of grounds to support other discipline, is on the university administration;

(am) The standard of proof shall be a preponderance of the evidence;

- (b) No academic staff member who participated in the investigation of allegations leading to the filing of a statement of charges, or who participated in the filing of a statement of charges, or who is a material witness, shall be qualified to sit on the hearing committee in that case. No university employee or other person who participated in the investigation of allegations leading to the filing of a statement of charges, or who participated in the filing of a statement of charges, or who is a material witness, shall be qualified to serve as the hearing examiner in that case;
- (c) The hearing shall be closed unless the academic staff member or the complainant requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., Open Meeting Law);
- (d) The hearing committee may, on motion the complainant, or the academic staff member, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the academic staff equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the academic staff establishing the standing committee under this rule;
- (e) The hearing committee or the hearing examiner shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules in s. UWS 11.21(1)(h);
- (f) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the hearing committee concerning its wishes in this regard. The function of legal counsel shall be to advise the hearing committee, consult with them on legal matters, and such other responsibilities as shall be determined by the hearing committee within the provisions of the rules and procedures adopted by the academic staff of the institution in establishing the standing academic staff committee under this policy;
- (h) Nothing in this section shall prevent the settlement of cases by mutual agreement between the university administration, the complainant, and the academic staff member;
- (i) Delay or adjournment of the hearing for good cause may be granted. Good cause includes:
1. The need to investigate evidence as to which a valid claim of surprise is made;
 2. To ensure the presence of the academic staff member or the complainant, an advisor, or a witness;
 3. To provide language assistance or accommodation of disabilities; and
 4. To accommodate concurrent law enforcement activity.

UWS 11.23 Hearing committee or hearing examiner

findings and recommendations to the chancellor. The hearing committee or hearing examiner shall simultaneously send to the chancellor, to the complainant, and to the academic staff member concerned, within 30 days after the conclusion of the hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations.

UWS 11.24 Chancellor's decision (1) After reviewing the matter on the record and considering arguments if submitted by the parties, the chancellor shall issue a decision. The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations. If the chancellor's proposed

decision differs substantially from those recommendations, the chancellor shall promptly consult the hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a decision. In that decision, the chancellor may order dismissal of the academic staff member, may impose a lesser disciplinary action, or may find in favor of the academic staff member. The academic staff member shall be notified of the chancellor's decision in writing. The complainant shall be notified of the chancellor's decision at the same time as the academic staff member. This decision shall be deemed final unless the board, upon request of the academic staff member or complainant, grants review based on the record.

(2) The chancellor's decision shall be based on the record created before the hearing committee or hearing examiner, and the chancellor shall include the chancellor's rationale in the decision. The chancellor's decision shall be simultaneously sent to the academic staff member concerned, the complainant, and to the hearing committee or the hearing examiner within 45 days of the chancellor's receipt of the hearing committee's or hearing examiner's materials. A decision by the chancellor ordering dismissal shall specify the effective date of the dismissal.

UWS 11.25 Appeal to the board. (1) A member of the academic staff or the complainant may file an appeal of the chancellor's decision to the board Any appeal must be made within 30 days of the date of the decision of the chancellor to dismiss. The board shall provide the academic staff member and the complainant an opportunity for filing written exceptions to the chancellor's decision, and for oral arguments, unless the academic staff member and the complainant waive in writing the right to file exceptions and for oral arguments. The hearing of any oral arguments shall be closed unless the academic staff member or the complainant requests an open hearing (see subch. V of ch. 19, Stats., Open Meeting Law).

(2) The academic staff member or complainant may file written exceptions to the chancellor's decision, and the board shall conduct its review of the chancellor's decision, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter; or
3. The Title IX coordinator, investigator(s), the chancellor, the hearing examiner, or the hearing committee members had a conflict of interest or bias for or against the academic staff member or complainant, or against complainants and respondents generally, that affected the outcome.

(3) If the board decides to take action different from the decision of the chancellor, then before taking final action the board shall consult with the chancellor.

(4) The board shall make its decision based on the record created before the hearing committee or hearing examiner. Within 60 days of receipt of the chancellor's decision, or otherwise as soon as practicable, the board shall simultaneously notify the academic staff member and the complainant of the board's final decision, which shall include the board's rationale for its decision.

(5) A decision by the board ordering dismissal of an academic staff member shall specify the effective date of the dismissal.

UWS 11.26_ Suspension from duties in Title IX dismissal cases. Pending the final decision as to dismissal, an academic staff member with an indefinite appointment shall not be relieved of duties, except where, after consulting with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in his or her position. Where such determination is made, the staff member may be relieved of their ~~his or her~~ position immediately, or be assigned to another administrative unit, but their ~~his or her~~ salary shall continue until the chancellor makes a decision as to dismissal, unless the chancellor also makes the determinations set forth in s. UWS 11.105 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 11.105 shall apply.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.

Chapter UWS 17

STUDENT NONACADEMIC DISCIPLINARY PROCEDURES

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[UWS 17.19](#) [UWS 17.25](#) Emergency suspension.

Note: See ch. [UWS 14](#) for student academic disciplinary procedures.

Note: Chapter UWS 17 as it existed on August 31, 1996 was repealed and a new chapter UWS 17 was created effective September 1, 1996. Chapter UWS 17 as it existed on August 31, 2009, was repealed and a new chapter UWS 17 was created effective September 1, 2009.

UWS 17.01 Policy statement. The missions of the University of Wisconsin System and its individual institutions can be realized only if the university's teaching, learning, research and service activities occur in living and learning environments that are safe and free from violence, harassment, fraud, theft, disruption and intimidation. In promoting such environments, the

university has a responsibility to address student nonacademic misconduct; this responsibility is separate from and independent of any civil or criminal action resulting from a student's conduct. This chapter defines nonacademic misconduct, provides university procedures for effectively addressing misconduct, and offers educational responses to misconduct. The University of Wisconsin System is committed to respecting students' constitutional rights. Nothing in this chapter is intended to restrict students' constitutional rights, including rights of freedom of speech or to peaceably assemble with others.

UWS 17.02 Definitions. In this chapter:

(1) "Chief administrative officer" means the chancellor of an institution ~~or dean of a campus~~ or their designees.

(2) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."

(2m) "Complainant" means any individual who is ~~reported to have been subjected to sexual harassment, sexual assault, dating violence, domestic violence, or stalking~~ alleged to be the subject of sexual misconduct, as defined in s. ~~UWS 17.09~~ UWS 17.16.

(2g) "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to have sexual intercourse or sexual contact engage in sexual activity or other conduct activity referenced in the definitions of sexual assault and sexual exploitation defined in s. UWS 17.16. A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

(3) "Days" means calendar days.

(4) "Delivered" means sent by electronic means to the student's official university email address and, in addition, provided by any of the following methods:

(a) Given personally.

(b) Placed in the student's official university mailbox.

(c) Mailed by regular first-class United States mail to the student's current address as maintained by the institution.

(5) "Disciplinary file" means the record maintained by the student affairs officer responsible for student discipline.

(6) "Disciplinary probation" means a status in which a student may remain enrolled in the university only upon the condition that the student complies with specified standards of conduct or other requirements or restrictions on privileges, for a specified period of time, not to exceed two years.

(7) "Disciplinary sanction" means any action listed in s. UWS 17.10 (1) taken in response to student nonacademic misconduct.

(7m)-“Education program or activity” includes, for purposes of a formal Title IX misconduct Complaint only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

(8) “Expulsion” means termination of student status with resultant loss of all student rights and privileges.

(8m) “Formal Title IX complaint” is, for the purpose of Title IX misconduct only, for the purposes of a Title IX complaint only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against a an academic staff member student and requesting that the institution investigate the allegations. At the time of filing of the formal Title IX complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal Title IX complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal Title IX complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

(9) “Hearing examiner” means an individual, other than the investigating officer, appointed by the chief administrative officer in accordance with s. [UWS 17.06 \(2\)](#) for the purpose of conducting a hearing under s. [UWS 17.12](#) or [UWS 17.18](#).

(9m) “Incapacitation” means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person’s decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

(10) “Institution” means any university, or an organizational equivalent designated by the board, ~~and the University of Wisconsin colleges.~~

(11) “Investigating officer” means an individual, or ~~his or her~~their designee, appointed by the chief administrative officer of each institution, to conduct investigations of nonacademic misconduct under this chapter.

(12) “Nonacademic misconduct hearing committee” or “committee” means the committee appointed pursuant to s. [UWS 17.07](#) to conduct hearings under s. [UWS 17.12](#) or [UWS 17.18](#).

(12m) “Party” refers to a respondent and/or complainant involved in a disciplinary procedure under s. [UWS 17.12](#) or [UWS 17.18](#).

(13) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than "clear and convincing evidence" and is the minimum standard for a finding of responsibility under this chapter.

(13m) "Respondent," ~~for conduct defined in s. UWS 17.09,~~ means any student who ~~is accused of violating any provision of this chapter that section, and~~ was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred ~~and has been reported to have violated UWS 17.09 or UWS 17.16. For conduct defined in s. UWS 17.16, means any student who has been reported to be the perpetrator of sexual misconduct under that section.~~

(14) "Student" means any person who is registered for study in an institution for the academic period in which the misconduct occurred, or between academic periods, for continuing students.

(15) "Student affairs officer" means the dean of students or student affairs officer or other personnel designated by the chief administrative officer to coordinate disciplinary hearings and carry out duties described in this chapter.

(16) "Suspension" means a loss of student status for a specified length of time, not to exceed two years, with resultant loss of all student rights and privileges.

(17) "University lands" means all real property owned by, leased by, or otherwise subject to the control of the Board of Regents of the University of Wisconsin System.

UWS 17.03 Consistent institutional policies. Each institution is authorized to adopt policies consistent with this chapter. A copy of such policies shall be filed with the Board of Regents and the University of Wisconsin System office of academic affairs.

UWS 17.04 Notice to students. Each institution shall publish ch. [UWS 17](#) on its website and shall make ch. [UWS 17](#) and any institutional policies implementing ch. [UWS 17](#) freely available to students through the website or other means.

UWS 17.05 Designation of investigating officer. The chief administrative officer of each institution shall designate an investigating officer or officers for allegations of student nonacademic misconduct. The investigating officer shall investigate student nonacademic misconduct and initiate procedures for nonacademic misconduct under [ss. UWS 17.11 and UWS 17.17](#). For allegations involving ~~sexual assault, domestic violence, dating violence, stalking, or sexual harassment~~ sexual misconduct, as defined in s. UWS 17.16, the ~~chief administrative officer shall involve the~~ Title IX Coordinator, or designee shall serve as the investigating officer, ~~in accordance with applicable institutional policies.~~

UWS 17.06 Nonacademic misconduct hearing examiner.

(1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the designation of a student

nonacademic misconduct hearing examiner to fulfill the responsibilities of the nonacademic misconduct hearing examiner in this chapter.

(2) A hearing examiner shall be selected by the chief administrative officer ~~from the faculty and staff of the institution~~, pursuant to the policies adopted under sub. (1).

UWS 17.07 Nonacademic misconduct hearing committee.

(1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the establishment of a student nonacademic misconduct hearing committee to fulfill the responsibilities of the nonacademic misconduct hearing committee in this chapter.

(2) A student nonacademic misconduct hearing committee shall consist of at least three persons, including at least one student, except that no such committee shall be constituted with a majority of members who are students. The presiding officer, who may be the hearing examiner designated pursuant to s. UWS 17.06, shall be appointed by the chief administrative officer. The presiding officer and at least one other member shall constitute a quorum at any hearing held pursuant to due notice.

UWS 17.08 Nonacademic misconduct occurring on or outside of university lands.

(1) MISCONDUCT ON UNIVERSITY LANDS. Except as provided in s. UWS 17.08 (2), the provisions contained in this chapter shall apply to the student conduct described in ss. UWS 17.09 and UWS 17.16 that occurs on university lands or at university-sponsored events.

(2) MISCONDUCT OUTSIDE OF UNIVERSITY LANDS. The provisions contained in this chapter may apply to the student conduct described in ss. UWS 17.09 and UWS 17.16 that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer shall consider whether the conduct meets one or more of the following conditions:

(a) The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.

(b) The conduct indicates that the student presented or may present a danger or threat to the health or safety of ~~themselves-himself, herself~~ or others.

(c) The conduct demonstrates a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions.

UWS 17.09 Conduct subject to disciplinary action. In accordance with s. UWS 17.08, the university may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct: Conduct defined in s. UWS 17.09 will use the disciplinary procedure, hearing, appeal and settlement processes detailed in ss. UWS 17.110 to—17.152. However, at the university's discretion, conduct defined in s. UWS 17.09, when arising out of the same facts and circumstances as sexual misconduct defined in s.

17.16, may be consolidated with such charges and addressed with the sexual misconduct disciplinary procedure, hearing, appeal, and settlement processes detailed in UWS 17.17-17.21.

(1) DANGEROUS CONDUCT. Conduct that endangers or threatens the health or safety of oneself or another person.

~~**(2) SEXUAL ASSAULT.** Conduct defined in s. 940.225, Stats.~~

~~**(3) STALKING.** Conduct defined in s. 940.32, Stats.~~

(4) HARASSMENT. Conduct defined in s. 947.013, Stats.

(5) HAZING. Conduct defined in s. 948.51, Stats.

(6) ILLEGAL USE, POSSESSION, MANUFACTURE, OR DISTRIBUTION OF ALCOHOL OR CONTROLLED SUBSTANCES. Use, possession, manufacture, or distribution of alcoholic beverages or of marijuana, narcotics, or other controlled substances, except as expressly permitted by law or university policy.

(7) UNAUTHORIZED USE OF OR DAMAGE TO PROPERTY. Unauthorized possession of, use of, moving of, tampering with, damage to, or destruction of university property or the property of others.

(8) DISRUPTION OF UNIVERSITY-AUTHORIZED ACTIVITIES. Conduct that obstructs or impairs university-run or university-authorized activities, or that interferes with or impedes the ability of a person to participate in university-run or university-authorized activities.

(9) FORGERY OR FALSIFICATION. Unauthorized possession of or fraudulent creation, alteration, or misuse of any university or other governmental document, record, key, electronic device, or identification.

(10) MISUSE OF COMPUTING RESOURCES. Conduct that involves any of the following:

(a) Failure to comply with laws, license agreements, and contracts governing university computer network, software, and hardware use.

(b) Use of university computing resources for unauthorized commercial purposes or personal gain.

(c) Failure to protect a personal password or university-authorized account.

(d) Breach of computer security, invasion of privacy, or unauthorized access to university computing resources.

~~(149)~~ FALSE STATEMENT OR REFUSAL TO COMPLY REGARDING A UNIVERSITY MATTER. Making a knowingly false oral or written statement to any university employee or agent of the university regarding a university matter, or refusal to comply with a reasonable request on a university matter.

~~(1210)~~ VIOLATION OF CRIMINAL LAW. Conduct that constitutes a criminal offense as defined by state or federal law.

~~(1311)~~ SERIOUS AND REPEATED VIOLATIONS OF MUNICIPAL LAW. Serious and repeated off-campus violations of municipal law.

~~(1412)~~ VIOLATION OF CH. UWS 18. Conduct that violates ch. UWS 18, including, but not limited to, provisions regulating fire safety, theft, and dangerous weapons.

~~(1513)~~ VIOLATION OF UNIVERSITY RULES. Conduct that violates any published university rules, regulations, or policies, including provisions contained in university contracts with students.

~~(1614)~~ NONCOMPLIANCE WITH DISCIPLINARY SANCTIONS. Conduct that violates a sanction, requirement, or restriction imposed in connection with previous disciplinary action.

(15) Retaliation. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in UWS 17.17-17.21, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under s. UWS 17.17-17.21.

(16) Sexual Misconduct

~~(17) DATING VIOLENCE. Violence committed by a student against another person with whom they are in a "dating relationship" as defined in s. 813.12 (1) (ag), Stats.~~

~~(18) DOMESTIC VIOLENCE. Conduct defined as "domestic abuse" in ss. 813.12 (1) (am) and 968.075, Stats. (19) SEXUAL HARASSMENT. Conduct defined in s. 111.32 (13), Stats., or as defined in Board of Regent Policy that addresses sexual harassment~~

UWS 17.10 Disciplinary sanctions.

(1) The disciplinary sanctions that may be imposed for nonacademic misconduct, in accordance with the procedures of ss. UWS 17.11 to 17.13, and 17.17 to 17.19 are any of the following:

- (a) A written reprimand.
- (b) Denial of specified university privileges.
- (c) Payment of restitution.
- (d) Educational or service sanctions, including community service.
- (e) Disciplinary probation.
- (f) Imposition of reasonable terms and conditions on continued student status.

- (g) Removal from a course in progress.
- (h) Enrollment restrictions on a course or program.
- (i) Suspension.
- (j) Expulsion.

(2) One or more of the disciplinary sanctions listed in sub. (1) may be imposed for an incident of nonacademic misconduct.

(3) Disciplinary sanctions shall not include the termination or revocation of student financial aid; however, this shall not be interpreted as precluding the individual operation of rules or standards governing eligibility for student financial aid under which the imposition of a disciplinary sanction could result in disqualification of a student for financial aid.

UWS 17.11 Disciplinary procedure.

(1) PROCESS. The investigating officer may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.10 (1) for conduct defined in s. UWS 17.09.

(2) CONFERENCE WITH RESPONDENT. When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly contact the respondent in person, by telephone, or by electronic mail to offer to discuss the matter, review the investigating officer's basis for believing that the respondent engaged in nonacademic misconduct, and to afford the respondent an opportunity to respond. If the respondent fails to respond to the investigating officer, the investigating officer may proceed to make a determination on the basis of the available information. ~~A complainant shall have all the rights provided to the respondent in this subsection.~~

(3) DETERMINATION BY THE INVESTIGATING OFFICER THAT NO DISCIPLINARY SANCTION IS WARRANTED. If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did not in fact occur, or that no disciplinary sanction is warranted under the circumstances, the matter will be considered resolved without the necessity for further action. The investigating officer shall simultaneously notify the respondent, ~~and the complainant of this outcome and offer to discuss it separately with either one. If the investigating officer determines that nonacademic misconduct did not occur or that no disciplinary sanction is warranted, the complainant may appeal this decision in accordance with s. UWS 17.13.~~

(4) PROCESS FOLLOWING DETERMINATION BY THE INVESTIGATING OFFICER THAT NONACADEMIC MISCONDUCT OCCURRED.

(a) If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did occur and that one or more of the disciplinary sanctions listed under s. UWS 17.10 (1) should be recommended, the investigating officer shall prepare a written report which shall contain all of the following:

1. A description of the alleged misconduct.

2. A description of all information available to the university regarding the alleged misconduct. ~~Such information shall be available to the complainant and the respondent, except as may be precluded by applicable state or federal law.~~

3. Specification of the sanction sought.

4. Notice of the respondent's right to a hearing.

5. A copy of this chapter and of the institutional procedures adopted to implement this section.

(b) The written report shall be delivered ~~simultaneously~~ to the respondent ~~and complainant, excluding any information that may be precluded by applicable state or federal law.~~

(c) A respondent who receives a written report under this section has the right to a hearing under s. [UWS 17.12](#) to contest the determination that nonacademic misconduct occurred, the choice of disciplinary sanctions, or both.

1. Where the disciplinary sanction sought is one of those listed in s. [UWS 17.10 \(1\) \(a\) to \(g\)](#), and if the respondent desires a hearing, the respondent shall file a written request with the student affairs officer within 10 days of the date the written report is delivered to the respondent. If the respondent does not request a hearing within this period, the determination of nonacademic misconduct shall be regarded as final, and the disciplinary sanction sought shall be imposed.

2. Where the disciplinary sanction sought is one of those listed in s. [UWS 17.10 \(1\) \(h\) to \(j\)](#), the investigating officer shall forward a copy of the written report under par. (b) to the student affairs officer. The student affairs officer shall, upon receipt of the written report, proceed under s. [UWS 17.12](#) to schedule a hearing on the matter. A hearing shall be conducted unless the respondent waives, in writing, the right to such a hearing.

UWS 17.12 Hearing.

(1) A respondent who requests a hearing, or for whom a hearing is scheduled under s. [UWS 17.11 \(4\) \(c\) 2.](#) ~~for conduct defined in s. [UWS 17.09](#)~~, shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee. ~~In cases of sexual assault, dating violence, domestic violence, stalking, or sexual harassment the university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.~~

(2) If a respondent requests a hearing under s. [UWS 17.11 \(4\) \(c\) 1.](#), or a hearing is required to be scheduled under s. [UWS 17.11 \(4\) \(c\) 2.](#), the student affairs officer shall take the necessary steps to convene the hearing and shall schedule it within 15 days of receipt of the request or written report. The hearing shall be conducted within 45 days of receipt of the request or written report, unless a different time period is mutually agreed upon by the respondent and investigating officer or is ordered or permitted by the hearing examiner or committee.

(3) No less than 5 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, a full explanation of the facts upon which the

determination of misconduct was based, and shall provide the respondent ~~and the complainant~~ with access to or copies of the investigating officer's explanation, together with any other materials provided to the hearing examiner or committee by the investigating officer, including any additional available information of the type described in s. UWS 17.11 (4) (a) 2.

(4) The hearing shall be conducted in accordance with the following guidance and requirements:

(a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in ch. UWS 17.

(b) The respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on ~~his or her~~their own behalf, and the right to be accompanied by an advisor of the respondent's choice. The advisor may be a lawyer. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (a) to (h), the advisor may counsel the respondent but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the respondent except at the discretion of the hearing examiner or committee. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (i) or (j), or where the respondent has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on behalf of the respondent. In accordance with the educational purposes of the hearing, the respondent is expected to respond on ~~his or her~~their own behalf to questions asked of ~~him or her~~them during the hearing. ~~The complainant shall have all the rights provided to the respondent in this subsection.~~

(c) The hearing examiner or committee:

1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.

2. Shall observe recognized legal privileges.

3. May take reasonable steps to maintain order, and to adopt procedures for the questioning of a witness appropriate to the circumstances of that witness's testimony, provided, however, whatever procedure is adopted, the ~~complainant and~~ respondent ~~are~~ is allowed to effectively question the witness.

(d) The hearing examiner or committee shall make a record of the hearing. The record shall include a verbatim record of the testimony, which may be a sound recording, and a file of the exhibits offered at the hearing. The respondent ~~and the complainant~~ may access the record, except as may be precluded by applicable state or federal law.

(e) The hearing examiner or committee shall prepare written findings of fact and a written statement of its decision based upon the record of the hearing.

(f) A hearing examiner's or committee's finding of nonacademic misconduct shall be based on one of the following:

1. Clear and convincing evidence, when the sanction to be imposed is one of those listed in s. UWS 17.10 (1) (h) to (j).

2. A preponderance of the evidence, when the sanction to be imposed is one of those listed in s. UWS 17.10 (1) (a) to (g).

3. ~~A preponderance of the evidence, regardless of the sanction to be imposed, in all cases of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.~~

(g) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS 17.10 (1) (a) to (g) that differs from the recommendation of the investigating officer. Sanctions under s. UWS 17.10 (1) (h) to (j) may not be imposed unless previously recommended by the investigating officer.

(h) The hearing shall be conducted by the hearing examiner or committee, and the university's case against the respondent shall be presented by the investigating officer or ~~his or her~~their designee.

(i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered ~~simultaneously~~ to the respondent ~~and the complainant~~, excluding information that may be precluded by state or federal law. The decision shall become final within 14 days of the date on the written decision, unless an appeal is taken under s. UWS 17.13.

(j) If ~~the a party fails~~respondent fails to appear at a schedule hearing and to proceed, the hearing examiner or committee may issue a decision based upon the information provided.

(k) Disciplinary hearings are subject to the Wisconsin open meetings law and may be closed if the respondent ~~or complainant~~ requests a closed hearing or if the hearing examiner or committee determines that it is necessary to hold a closed hearing, as permitted under the Wisconsin open meetings law. Deliberations of the committee shall be held in closed session, in accordance with s. 19.85, Stats. As such, proper notice and other applicable rules shall be followed.

UWS 17.13 Appeal to the chancellor.

(1) ~~For conduct defined in s. UWS 17.09, W~~where the sanction prescribed by the hearing examiner or committee is one of those listed in s. UWS 17.10 (1) (h) to (j), the respondent may appeal in writing to the chief administrative officer within 14 days of the date of the written decision to review the decision of the hearing examiner or committee, based upon the record. ~~In cases involving sexual assault, dating violence, domestic violence, stalking, or sexual harassment, the complainant shall be notified of the appeal.~~

~~(2) In cases involving sexual assault, dating violence, domestic violence, stalking or sexual harassment, the following appeal rights shall be provided:~~

- ~~(a) The complainant may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the investigating officer pursuant to s. UWS 17.11 (3) or the hearing committee or examiner pursuant to s. UWS 17.12 (4) (i). The appeal shall be based upon the record. The respondent shall be notified of the appeal.~~
- ~~(b) The respondent may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the hearing committee, or examiner pursuant to s. UWS 17.12 (4) (i). The appeal shall be based upon the record. The complainant shall be notified of the appeal.~~
- (32) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:

- (a) The information in the record does not support the findings or decision.
- (b) Appropriate procedures were not followed which resulted in material prejudice to the respondent ~~or complainant~~.
- (c) The decision was based on factors proscribed by state or federal law.

(43) If the chief administrative officers makes a finding under sub. (23), ~~the chancellor~~ they may return the matter for consideration, or may invoke an appropriate remedy of ~~his or her~~ their own. The chief administrative officer's decision shall be communicated ~~simultaneously~~ to the respondent and the complainant.

UWS 17.14 Discretionary appeal to the Board of Regents. For conduct defined in s. UWS 17.09, ~~I~~institutional decisions under ss. UWS 17.11 to 17.13 shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by ~~any party~~ respondent within 14 days of the final institutional decision. ~~In cases involving sexual assault, dating violence, domestic violence, stalking, or sexual harassment, the non-appealing party shall receive notice of the appeal.~~

UWS 17.15 Settlement. For conduct defined in s. UWS 17.09, ~~T~~he procedures set forth in this chapter allow the university and a respondent to enter into a settlement agreement regarding the alleged misconduct, after proper notice has been given. Any such agreement and its terms shall be in writing and signed by the respondent and the investigating officer or student affairs officer. The case is concluded when a copy of the signed agreement is delivered to the respondent. ~~The investigating officer shall confer with the complainant regarding the proposed settlement and provide notice of the outcome.~~

UWS 17.16 Sexual Misconduct subject to disciplinary action. In accordance with s. UWS 17.08, the university may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct. Conduct as defined in s. UWS 17.16 ("sexual misconduct") will use the disciplinary procedure, hearing, appeal and settlement processes detailed in ss. UWS 17.17 to 17.21.

- (1) SEXUAL HARASSMENT. When on the basis of sex, unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that when using the legal "reasonable person" standard:

- (a) Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity; or
 - (b) Is so severe or, pervasive, or and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in institution sponsored or supported activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.
- (2) SEXUAL ASSAULT. An offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).
 - (a) Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.
 - (b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
 - (c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
 - (d) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent (See s. 948.02, Stats.)
- (3) Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (4) DOMESTIC VIOLENCE. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a persons who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075)
- (5) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.
- (6) SEXUAL EXPLOITATION. Occurs when an individual attempts, takes, or threatens to take nonconsensual sexual advantage of another person. Examples include, but are not limited to:

(a) Without the knowledge and consent of all participants –

1. observing, recording, or photographing private body parts or sexual activity of one or more ~~persons~~complainants;
 2. allowing another person to observe, record, or photograph sexual activity or private body parts of one or more ~~persons~~complainants; or
 3. otherwise distributing recordings, photographs, or other images of the sexual activity or private body partssame of one or more ~~persons~~complainants;
- (b) Masturbating, touching one’s genitals, or exposing one’s genitals in ~~another person~~the complainant’s presence without the consent of that ~~person~~complainant, or inducing another person to do the same.
- (c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual ~~contact or sexual intercourse~~activity;
- (d) Inducing incapacitation through deception for the purpose of making ~~another person~~the complainant vulnerable to non-consensual sexual activity;
- (e) Coercing ~~another person~~the complainant to engage in sexual activity for money or anything of value;
- (f) Threatening distribution of the following, to coerce ~~someone~~the complainant into sexual activity or providing money or anything of value:
1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more ~~persons~~complainants, or
 2. Other information of a sexual nature (for example, may include but is not limited to, sexual history or sexual orientation).

UWS 17.17 Sexual misconduct disciplinary procedure.

(1) PROCESS. The investigating officer(s) may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.10 (1), for sexual misconduct defined in s. UWS 17.16, and conduct described in s. UWS 17.09 when consolidated with sexual misconduct charges pursuant to this section and consistent with s. UWS 17.08

(a) As required by 34 CFR Part 106, a sexual misconduct disciplinary procedure will also be considered ~~arequire~~ “Title IX Complaintmisconduct” and require associated process when all of the following requirements are met:

1. A “formal complaint,” as defined in 17.02(~~X~~8m) is either filed by a complainant or signed by the Title IX Coordinator.
2. The alleged conducts is on the basis of sex; and meets the definitions of sexual harassment as defined in s. UWS 17.16(~~1~~)(a) or sexual assault, dating violence, domestic violence, or stalking as defined in s. UWS 17.16 (2-5).
3. The alleged conduct occurred within a university “education program or activity” as defined in s. UWS 17.02(7m).

4. The alleged conduct occurred against the complainant while in the United States.
5. The complainant is participating in or attempting to participate in the university's education program or activity at the time they file the complaint; and

(b) The university will dismiss a ~~Title IX Complaint~~ complaint of ~~the Title IX~~ misconduct that does not meet all the — requirements of s. sub. (1)(a)(1-5).

(c) The university may dismiss a complaint of a ~~Title IX Complaint~~ Title IX misconduct if at any time during the disciplinary — procedure or hearing:

1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the ~~Title IX complaint~~ formal complaint or any allegations therein;
2. The respondent is no longer enrolled by the university; or
3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint ~~Title IX Complaint~~ or allegations therein.

(d) Upon dismissal of a ~~Title IX Complaint~~ thea complaint of Title IX misconduct, the university will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the complainant and respondent.

(e) Dismissal of a ~~a~~ complaint of Title IX ~~Complaint~~ misconduct does not preclude other university action under ch. UWS 17.

(f) The university may consolidate disciplinary procedures as to allegations of sexual misconduct, as defined in s. UWS 17.16, against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual misconduct arise out of the same facts or circumstances.

(g) In consultation with the complainant, the university may choose to address allegations of non-Title IX sexual misconduct with non-disciplinary measures outside the procedures of s. UWS 17. Non-disciplinary measures may include supportive measures and protective measures for complainant, which may or may not involve the respondent.

(2) NOTICE OF INVESTIGATION. When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly distribute a written Notice of Investigation in person, by telephone or by electronic mail, to the complainant and respondent. The Notice of Investigation will include:

(a) Details known at the time of issuing notice, including:

1. The identities of the complainant and respondent involved in the incident, if known;
2. The conduct allegedly constituting sexual misconduct; and
3. The date and location of alleged incident, if known

- (b) Notice to the complainant and respondent that they may have an advisor of their choice, who may be an attorney
- (c) Notice to the complainant and respondent that they may inspect and review evidence collected during the investigation
- (d) Notice of s. UWS 17.09(9), false statement or refusal to comply regarding a university matter.

(e) Notice that the respondent is presumed not responsible for the alleged sexual misconduct until a determination regarding responsibility is made at the conclusion of the disciplinary procedure.

(f) Notice if the sexual misconduct disciplinary procedure allegations also involves a Title IX-Complaint misconduct.

(g) Information about the nonacademic misconduct process available in ch. UWS 17 and about any available informal resolution process.

(h) If, during the course of an investigation, the university decides to investigate allegations that are not included in the Notice of Investigation, the university shall send an amended Notice of Investigation with additional allegations.

(3) INVESTIGATION. During the investigation, the investigating officer will:

- (a) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (b) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (c) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- (d) Provide, to a party anyone whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party person to prepare to participate;
- (e) Not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a grievance process under this section.

(4) REVIEW OF EVIDENCE. Prior to completion of the final investigative report (s. UWS 17.17(5)), the university shall provide the complainant and respondent and their advisors, if any, the evidence gathered during the university's investigation that is directly related to the allegations of sexual misconduct in an electronic format or hard copy.

(a) The evidence subject to review includes information upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

(b) The complainant and respondent will be afforded at least 10 days to submit a written response to the evidence, which the investigator will consider prior to completion of the final investigative report.

(5) FINAL INVESTIGATIVE REPORT. The investigator will create an investigative report that fairly summarizes relevant evidence.

(a) The final investigative report shall be delivered simultaneously to the respondent and complainant and their advisors, if any, for their review and response at least 10 days prior to a hearing.

(b) The final investigative report may contain recommended determinations as to whether sexual misconduct occurred and specification of any sanction(s) recommended.

(c) After receipt of the final investigative report, the complainant and respondent have the right to a hearing under s. UWS 17.18 for a formal determination as to whether sexual misconduct occurred, potential disciplinary sanctions, or both.

(d) Upon distribution of the final investigative report to the complainant and respondent, the university will proceed under s. UWS 17.18 to schedule a hearing on the matter. A hearing shall be conducted unless the complainant and respondent waive, in writing, the right to such a hearing or otherwise voluntarily choose to proceed with a settlement agreement (or informal resolution) under s. UWS 17.21.

UWS 17.18 Hearing (Sexual Misconduct).

(1) The university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

(2) The university shall take the necessary steps to convene the hearing and shall schedule it within 15 days of the distribution of the final investigative report. The hearing shall be conducted within 45 days of the distribution of the final investigative report, unless a different time period is mutually agreed upon by the complainant, respondent and university or is ordered or permitted by the hearing examiner or committee.

(3) No less than 10 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, the final investigative report and any additional available information of the type described in s. UWS 17.17(4).

(4) The hearing shall be conducted in accordance with the following guidance and requirements:

(a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in ch. UWS 17.

(b) Both the complainant and respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on their own behalf, and the right to be accompanied by an advisor of their choice. The advisor may be a lawyer. In accordance with the educational purposes of the hearing, the complainant and respondent are expected to respond on their own behalf to questions asked of them during the hearing.

(c) The hearing examiner or committee:

1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.

2. Shall not permit questions and evidence about the complainant's sexual predisposition or prior sexual behavior unless:

- i. Such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- ii. If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

3. Shall observe recognized legal privileges including, but not limited to, those described in s. UWS 17.17(3)(e).

- (2) May take reasonable steps to maintain order, and to adopt procedures for the questioning of a witness appropriate to the circumstances of that witness's testimony, provided, however, whatever procedure is adopted, the advisors for the complainant and respondent are allowed to effectively question the party or witness.

(5) Cross examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

- i. If a party does not have an advisor at the hearing to conduct cross-examination, the university will provide someone, without fee or charge, who may or may not be an attorney, to conduct cross-examination.
- ii. Before a party or witness answers a cross-examination or other question, the hearing examiner or committee must first determine whether a question is relevant or not and explain any decision to exclude those questions as not relevant.

- iii. The hearing examiner or committee cannot draw an inference regarding responsibility based solely on a party's or a witness's absence from the hearing or refusal to answer cross-examination questions
- iv. At hearings involving a Title IX Complaint misconduct, if a party or a witness does not submit to cross-examination at the hearing, then the hearing examiner or committee must not rely on any statement of that party or witness made prior to or during the hearing in reaching a determination regarding responsibility.

(6) If a party fails to appear at a scheduled hearing and to proceed, the hearing examiner or committee may issue a decision based upon the information provided except as described in sub (5)(iv).

(7) The hearing examiner or committee shall make a record of the hearing. The record shall include a verbatim record of the testimony, which may be a sound recording, and a file of all evidence presented at the hearing. The respondent and the complainant may access the record, except as may be precluded by applicable state or federal law.

(8) The hearing examiner or committee shall prepare written findings of fact and a written statement of its decision based upon the record of the hearing, using the preponderance of the evidence standard. The written report will include:

- (a) Identification of the allegations potentially constituting sexual misconduct
- (b) A description of the procedural steps taken from the receipt of the initial complaint through the determination, including any notifications to the complainant and respondent, interviews with the complainant and respondent and witnesses, site visits, methods used to gather other evidence, and hearings held.
- (c) Findings of fact supporting the determination.
- (d) Conclusions regarding the application of ch. UWS 17 to the facts.
- (e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility under s. UWS 17 and any Title IX- Complaint misconduct, any disciplinary sanctions the university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided by the university to the complainant.
- (f) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS 17.10 (1) (a) to (j).
- (g) Procedures and permissible bases for the complainant and respondent to appeal.

(9) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered simultaneously to the respondent and the complainant, excluding information that may be precluded by state or federal law. The decision regarding responsibility becomes final either on the date that the university provides the complainant and respondent with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely..

(10) Disciplinary hearings are subject to the Wisconsin open meetings law and may be closed if the respondent or complainant requests a closed hearing or if the hearing examiner or committee determines that it is necessary to hold a closed hearing, as permitted under the Wisconsin open meetings law. Deliberations of the committee shall be held in closed session, in accordance with s. 19.85, Stats. As such, proper notice and other applicable rules shall be followed.

UWS 17.19 Appeal to the chancellor (Sexual Misconduct).

(1) The respondent or complainant may appeal in writing to the chief administrative officer within 14 days of the date of the written decision for a review, based on the record, of the following:

(a) A dismissal of a Title IX Complaint misconduct.

(b) The written decision of the hearing examiner or committee.

(2) The chief administrative officer has 30 days from receipt of an appeal to respond in writing simultaneously to both the complainant and respondent and shall sustain the decision unless the chief administrative officer finds any of the following:

(a) The information in the record does not support the findings or decision.

(b) A procedural irregularity affected the outcome of the matter

(c) The decision was based on factors proscribed by state or federal law.

(d) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and

(e) The Title IX Coordinator, investigator, hearing examiner, or a member of the hearing committee had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(3) If the chief administrative officer makes a finding under sub. (2), the chief administrative officer may return the matter for consideration, or may invoke an appropriate remedy of their own. The chief administrative officer's written decision describing the result of the appeal and the rationale for the result shall be communicated simultaneously to the respondent and complainant.

(4) When an appeal is filed, the chief administrative officer will notify the other party in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

UWS 17.21 Settlement (Sexual Misconduct). The procedures set forth in this chapter allow the university, the respondent, and the complainant to voluntarily enter into a settlement agreement (or informal resolution) regarding the alleged misconduct, any time after the ~~written notice has been~~ Notice of Investigation has been distributed ~~given to the complainant and respondent and~~ prior to any final determination regarding responsibility. Any such agreement and its terms shall be in writing and signed by both the complainant and respondent and the Title IX Coordinator or designee. If there is no identified complainant or the complainant ~~declined to participate~~ has declined participation in the disciplinary procedure, or when Title IX misconduct is involved and the complainant has withdrawn the formal complaint, the agreement and its terms ~~shall be in writing and~~ may be signed by only the respondent and Title IX Coordinator or designee. The case is concluded when a copy of the signed agreement is delivered to the complainant and respondent. At any time prior to agreeing to a resolution, either party has the right to withdraw from the settlement process and resume the process under s. UWS 17.17 to 17.20.

UWS 17.20 Discretionary appeal to the Board of Regents (Sexual Misconduct). University decisions under ss. UWS 17.17 to 17.19 shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by any party within 14 days of the final university decision. If the board of regents grants a review upon the record, it will:

- (1) Notify the other party in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.
- (2) Issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent.

UWS 17.22~~16~~ Effect of discipline within the institution. A respondent who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS 17.10 (1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11 ~~or UWS 17.17~~, shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

UWS 17.23~~17~~ Effect of suspension or expulsion within the university system.

- (1) Suspension or expulsion shall be systemwide in effect and shall be noted on an individual's transcript, with suspension noted only for the duration of the suspension period.
- (2) An individual who is suspended from one institution in the University of Wisconsin System may not enroll in another institution in the system until the suspension has expired by its own terms, except as provided in s. ~~UWS 17.18~~ UWS 17.24.

(3) An individual who is expelled from one institution in the University of Wisconsin System may not enroll in another institution in the system, except as provided in s. ~~UWS 17.18~~UWS 17.24.

(4) An individual who is in a state of suspension or expulsion from the university under this chapter, or who leaves or withdraws from the university while under nonacademic misconduct charges under this chapter, may not be present on any campus without the written consent of the chief administrative officer of that campus.

(5) Upon completion of a suspension period, an individual who is academically eligible may re-enroll in the institution which suspended ~~him or her~~them, provided all conditions from previous disciplinary sanctions have been met.

~~UWS 17.24~~**18** **Petition for restoration of rights after suspension or expulsion.** A respondent who has been suspended may petition to have ~~his or her~~their student status, rights, and privileges restored before the suspension has expired by its own terms under s. ~~UWS 17.17-23~~ (2). A respondent who has been expelled may petition for the right to apply for readmission. The petition shall be in writing and directed to the chief administrative officer of the institution from which the respondent was suspended or expelled ~~or of a different University of Wisconsin institution to which the respondent seeks admission or is seeking admission (if applying to a different UW school)~~. The chief administrative officer shall make the readmission decision. In cases of ~~sexual harassment, sexual assault, dating violence, domestic violence, and stalking~~ sexual misconduct, the readmission decision should be made in consultation with the Title IX ~~C~~oordinator, and the complainant should be notified of any change to the disciplinary outcome, ~~and, if enrolled at the time of the petition, should be provided opportunity to respond regarding any review of responsibility findings.~~

UWS 17.25~~19~~ **Emergency suspension.**

(1) The chief administrative officer may impose an emergency suspension on a respondent, pending final institutional action on a report of nonacademic misconduct, in accordance with the procedures of this section.

(2) The chief administrative officer of each institution may impose an emergency suspension on a respondent when all of the following conditions are met

(a) The investigating officer has made a reasonable attempt to offer the respondent the opportunity for discussion, either in person or by telephone.

(b) The investigating officer recommends a sanction of suspension or expulsion.

(c) The chief administrative officer concludes, based on the available information, that the misconduct occurred and that the respondent's continued presence on campus meets one or more of the following conditions:

1. Would constitute a potential for serious harm to the respondent.

2. Would constitute a potential for serious harm to others.
3. Would pose a threat of serious disruption of university-run or university-authorized activities.
4. Would constitute a potential for serious damage to university facilities or property.

(d) In cases of sexual misconduct as defined in s. UWS 17.16, the chief administrative officer has made reasonable attempts to consult with the complainant and offer protective measures.

(3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the respondent. In cases of ~~sexual harassment, sexual assault, dating violence, domestic violence, and stalking~~ sexual misconduct as defined in s. UWS 17.16, the written notification of the emergency suspension shall be delivered simultaneously to the complainant and the respondent. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the respondent and is final.

(4) Where an emergency suspension is imposed, the hearing on the underlying allegations of misconduct shall be held, either on or outside of university lands, within 21 days of the imposition of the emergency suspension, unless the respondent agrees to a later date.

(5) An emergency suspension imposed in accordance with this section shall be in effect until the decision in the hearing on the underlying charges pursuant to s. UWS 17.12 or 17.18 is rendered or the chief administrative officer rescinds the emergency suspension. In no case shall an emergency suspension remain in effect for longer than 30 days, unless the respondent agrees to a longer period.

(6) If the chief administrative officer determines that none of the conditions specified in sub. (2) (c) are present, but that misconduct may have occurred, the case shall proceed in accordance with s. UWS 17.12 or UWS 17.18, as applicable. ~~UWS 17.12 or 17.17 for alleged sexual misconduct as defined in s. UWS 17.16.~~

STATE OF WISCONSIN
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM	ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING EMERGENCY RULES
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The statements of scope for these rules, SS [081-20](#), [082-20](#), [083-20](#), and [084-20](#), were approved by the Governor on June 11, 2020, published in Register [774A4](#) on June 19, 2020, and approved by Board of Regents of the University of Wisconsin System on July 20, 2020.

ORDER

An order of the Board of Regents of the University of Wisconsin System to **create** UWS 4.01(3), 4.015 (12) and (13) and (14), 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 11.01(4), 11.015(12) and (13) and (14), 11.102(5), 11.104(3)(d) and (4)(a) and (4)(b) 11.13, 11.14, 11.15, 11.16, 11.17, 11.18, 11.19, 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.26, 17.02(2g) and (7m) and (8m) and (9m) and (12m), 17.09(15), 17.16, 17.17, 17.18, 17.19, 17.20, 17.21, and 17.25(2)(d); **renumber** UWS 17.09 (4) and (5) and (6) and (7) and (8) and (9) and (10) and (11) and (12) and (13) and (14) and (15) and (16), 17.13(3) and (4), 17.16, 17.17, 17.18, and 17.19 **to** 17.09(2) and (3) and (4) and (5) and (6) and (7) and (8) and (9) and (10) and (11) and (12) and (13) and (14), 17.13(2) and (3), 17.22, 17.23, 17.24, and 17.25 **respectively**; **amend** UWS 4.01(1), 4.05(1)(c), 4.07(1), 4.09, 7.05(1)(a) and (1)(b) and (5)(c) and (6) and (8), 11.104(1)(a) and (1)(b) and (3) and (5) and (6), 17.02(1) and (2m) and (13m), 17.05, 17.06(2), 17.07(2), 17.08(1) and (2), 17.09, 17.10(1), 17.11, 17.12(1) and (3) and (4), 17.13(1), 17.14, 17.15, 17.22, 17.23(2) and (3) and (5), 17.24, ; **repeal** 17.09(2) and (3) and (17) and (18), and 17.13(3) and (5) and (6); and **repeal and recreate** 4.015(2) and (5) and (6) and (9) and (10) and (11), 7.015(2), and 11.015(2) and (5) and (6) and (9) and (10) and (11), relating to addressing allegations of sexual misconduct against faculty, academic staff, and students of the University of Wisconsin System.

Analysis prepared by the Board of Regents and the University of Wisconsin System.

FINDING OF EMERGENCY

The Board of Regents of the University of Wisconsin System finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The U.S. Department of Education published new regulations on May 5, 2020 which take effect August 14, 2020. These regulations update the definitions of sexual misconduct and add additional process requirements for when universities respond to allegations of sexual misconduct against students and employees under Title IX of the Education Amendments of 1972. The University of Wisconsin Systems current policies for addressing allegations under Title IX reside within the Wisconsin Administrative Code and are structured on the basis of federal guidance issued prior of the new regulations, and several of these sections of the Code do not comply with the new regulations. Noncompliance with these regulations could result in loss of federal funding for the University of Wisconsin System, as well as potential litigation, which would threaten the welfare of the University of Wisconsin System.

ANALYSIS

Statutes interpreted: ss. [36.09 \(1\)\(a\)](#) and [36.11 \(1\)\(a\)](#), Stats.

Statutory authority: ss. [36.09 \(1\)\(a\)](#) and [36.11 \(1\)\(a\)](#), Stats.

Explanation of agency authority:

s. [36.09 \(1\)\(a\)](#), Stats.: “The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system.”

s. [36.11 \(1\)\(a\)](#), Stats.: “The board may promulgate rules under ch. 227 to protect the lives, health and safety of persons on property under its jurisdiction and to protect such property and to prevent obstruction of the functions of the system.”

Related statute or rule: N/A

Plain language analysis:

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

The current rules treat all allegations of sexual misconduct the same. The new federal regulations narrow the scope of conduct to which Title IX protections apply. However, the federal regulations specify that schools are not prohibited from addressing a broader scope of conduct under institutional codes of conduct. Under the new rules, allegations of sexual misconduct that do not fall within the scope of Title IX will continue to be addressed using student and employee conduct codes.

Definitions

The current rules define sexual misconduct, such as sexual harassment and sexual assault, under the corresponding statutory definitions in the Wisconsin Statutes. The new federal

regulations require adoption of definitions for sexual assault, dating violence, domestic violence, and stalking from the federal Clery and Violence Against Women Acts. Additionally, the new federal regulations define sexual harassment for Title IX purposes to include quid pro quo and “unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectionably offensive.”

The current rules allow University of Wisconsin System institutions to address allegations of sexual misconduct when the conduct occurs on university property, at university-sponsored events, or the conduct affects a substantial university interest. The new federal regulations narrow that definition to the following elements: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school’s education program or activity; (3) against a person in the United States. The regulations go on to define “education program or activity” to include situations over which the school exercised substantial control as well as buildings owned or controlled by student organizations officially recognized by a university, such as many fraternity and sorority houses. The new rules specifies the procedures University of Wisconsin System institutions should use in addressing sexual misconduct that meets the new definition and scope of the new federal regulations, as well as the procedures to be used in addressing sexual misconduct that falls outside of the scope of the regulations.

The current rules contain no definition for “sexual exploitation.” The new rules add a definition of “sexual exploitation” to the list of sexual misconduct that University of Wisconsin System institutions address.

Title IX Sexual Misconduct Procedures

Notice

The current rules mention several instances in which students and employees involved in an investigation of sexual misconduct must receive notice. The new federal regulations require notice to parties of formal Title IX complaints in more instances and in greater detail than the current rules provide. The new rules will update notice requirements to comply with the new federal regulations.

Mandatory Dismissal and Discretionary Dismissal

The current rules state that University of Wisconsin System institutions may or must dismiss complaints of sexual misconduct under certain circumstances. The new federal regulations define certain instances in which universities must or may dismiss complaints of sexual misconduct. For example, universities must dismiss allegations that do not meet the definitions of sexual misconduct under Title IX and may dismiss allegations of a complainant wishes to withdraw the complaint. A university may still address these dismissed complaints under other code of conduct provisions or state law. The new regulations also grant the parties the right to appeal the university’s dismissal of allegations. The new rules incorporate changes to comply with these requirements under the federal regulations.

Investigation

Under the current rules, University of Wisconsin System institutions investigate allegations of sexual misconduct through formal investigations, the investigator provides the opportunity for both parties to meet with the investigator to discuss the allegations, the investigator recommends sanctions against the respondent, and a governing body within the university confirms or amends these sanctions, which it may do without a hearing under certain circumstances. Under the federal regulations, universities must conduct investigation of formal Title IX complaints via an assigned investigator and must allow the parties an opportunity to present witnesses and evidence as well as review the evidence provided. Investigators must not make official findings of responsibility but may make recommended findings. The new rules incorporate changes to comply with these requirements under the federal regulations.

Hearing

The current rules allow University of Wisconsin System institutions to hold hearings related to allegations of sexual misconduct, but the rules do not always require them. The federal regulations require universities conduct live hearings with cross-examination conducted directly, orally, and in real time for all Title IX cases. At a live hearing, the institution must provide, without fee or charge, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. The parties' advisors must perform cross-examination. A hearing officer must preside over the hearing and determine the relevance of each question and explain any decision to exclude a question. The new rules incorporate changes to comply with these requirements under the federal regulations.

Summary of, and comparison with, existing or proposed federal regulation:

Title IX of the Education Amendments of 1972 provides that "[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The U.S. Department of Education has issued guidance through Dear Colleague Letters over the years which established the federal agency's expectations for institutions of higher education that receive federal funding. The new federal regulations are the first to interpret this law with respect to addressing allegations of sexual misconduct and override any guidance provided in the previous Dear Colleague Letters. Please see the Plain Language Analysis for further information related to the specific provisions under the new federal regulations.

Comparison with rules in adjacent states:

The new federal regulations require all universities that receive federal funding to comply with the regulations or risk losing the federal funding. All universities that receive federal funding are required to revise policies and procedures to comply with federal regulations.

Summary of factual data and analytical methodologies:

N/A

Analysis and supporting documents used to determine effect on small business:

N/A

Fiscal Estimate:

The new rules require University of Wisconsin System institutions to hold live hearings in response to formal Title IX complaints and to provide parties with advisors, free of charge or fee, for the purposes of cross-examination during these hearings. We anticipate potential costs associated with the requirement to hold hearings and provide advisors.

Effect on small business:

The new rules will not have an economic impact on small businesses. The new rules apply specifically to University of Wisconsin System institutions only.

Agency contact person:

Jess Lathrop
Executive Director and Corporate Secretary
Board of Regents of University of Wisconsin System
1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706;
Telephone 608-262-2324;
email address: board@uwsa.edu.

Place where comments are to be submitted and deadline for submission:

Public comments may be submitted to the agency in one of the following locations: (1) at a public hearing on the emergency and permanent rules held concurrently at a later date not yet determined; or (2) by mail to Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin. The deadline for submission of comments shall be determined at a later date.

Dated _____

Regent President
University of Wisconsin System

Summary of Comments on Administrative Code Emergency Rule Drafts to Chapters UWS 4, 7, 11, and 17

Introduction

The Board received written comments from ten commenters on the drafts of the Board's proposed rule change to Chapters UWS 4, 7, 11, and 17. These comments originated from internal sources within the UW System, including students, staff, and faculty. In general, commenters expressed concerns about the lack of specificity in some of the rule provisions, as well as a few of the policy choices within the rules. The commenters also suggested edits to the rules to provide greater clarity and better policy in the rules.

Concerns about Process

Several comments related to how the process may be too difficult, confusing, unfair, or lengthy for the parties involved. Several commenters expressed concerns about utilizing one grievance process for all allegations of sexual misconduct under UWS 17. In the commenters' opinions, the Title IX grievance process is already too complicated and intimidating to victims of sexual misconduct. One commenter expressed further concern that not all campuses would have the resources to handle all allegations of sexual misconduct under the same process. Therefore, the commenters recommended applying the new grievance process only where the federal regulations require it, rather than applying the process to instances of non-Title IX sexual misconduct.

Several commenters expressed concern for how the rules would handle a grievance process involving several sexual misconduct allegations or a mixture of sexual misconduct and misconduct that was not sexual under UWS 17. The commenters wondered if, in the event one of the allegations was dismissed, how the remainder of those allegations would be treated, such as whether the remaining allegations would be required to revert several steps in the process.

Several commenters expressed concern about the slight variations in process between students, faculty, and employees. For example, the commenters noted that the university is allowed to decide whether a hearing will take place in front of a hearing committee or a hearing officer in UWS 4, and 17, whereas UWS 11 allows the employee to decide. According to one of these commenters, the Title IX regulations require a consistent process for handling Title IX complaints against students, staff, and faculty. That commenter recommends creating greater uniformity between the various grievance processes in the rules.

One commenter raised concerns for the process steps in appealing to the chancellor under UWS 17.19. The rule requires the chancellor to first evaluate if an appeal is appropriate and then request written responses from the parties. The commenter suggested that the chancellor first request written responses from the parties, then make the determination of whether an appeal is appropriate based on the records presented to the chancellor and the responses the parties provide.

One commenter expressed concerns about how UWS 4.15(4)(c) could allow to limit the representation of the parties' advisors as long as it was "equally applied." The commenters concern was that this could be used in a way that would prevent complainant's advisor from intervening if the cross-examination became too aggressive. The commenter suggested making this language more clear as to when universities may limit representations in order to prevent scenarios such as the example the commenter offered.

One commenter expressed concerns about the vagueness related to extension of the investigation timelines. The commenter worried that the rules as drafted could allow universities to extend investigations indefinitely, which would be to the detriment of the parties. The commenter suggested that the rules place a cap on the maximum number of days an investigation could extend and provide for regular audits of these extensions to ensure timely resolution of complaints.

Concerns about Definitions

Several comments related to how several of the definitions in the rule drafts were either inadequately clear, specific, or appropriate. Several commenters thought that the definition of "complainant" in UWS 17.02(2m) should apply to victims of more harm than sexual misconduct, such as theft, hazing, or burglary.

One commenter thought a broader protection for against retaliation would be appropriate. The commenter noticed that retaliation protections were only in place for

sexual misconduct. The commenter thought the definition of “retaliation” should extend to all allegations of misconduct, not just sexual misconduct.

Several commenters thought the definition of “education program or activity” under UWS 4.12(6), 11.14(6), and 17.02(7m) was not adequately descriptive. Commenters wondered if, for example, student housing solely occupied by members of a student organization would be considered an “education program or activity.” The commenters suggested providing more clarity about what types of programs and spaces constitute an “education program or activity” under the rules.

Several commenters mentioned that they thought the title of UWS 4 should be renamed. The previous name of the chapter made mention that the chapter applied to dismissal of faculty, whereas the new title did not. The commenters recommended including “faculty” somewhere in the title for UWS 4.

Several commenters took issue with the varying usage between “Title IX misconduct” in UWS 4, 7, and 11, and “sexual misconduct” in UWS 17. These commenters claimed that the two different terms were confusing and made it difficult to distinguish when the two terms seemed to be trying to define essentially the same thing. The commenters suggested replacing “title IX misconduct” with “sexual misconduct.”

One commenter noted that the definition of “sexual exploitation” was only included in UWS 17. The commenter thought that this was too narrow of a utilization of the definition, and that the definition should be included in UWS 4, 7, and 11 as well. The commenter also expressed concern about the definition of “complaint” under UWS

17.02(8m). Whereas the definition currently only includes allegations “against academic staff,” the commenter would prefer that the same phrase be removed from the definition entirely.

One commenter questioned the utility of including two definitions sections in UWS 4, one in 4.015, and the other in 4.12. Rather than creating two distinct definitions sections, the commenter recommended incorporating the definitions in UWS 4.12 into 4.015, and if those definitions are only applicable to certain sections of the rule, the definition should say so. The same commenter requested greater clarity in UWS 4.20(g), which states that the process will conclude if it will not resolve before the scheduled end of the faculty member’s appointment. The commenter expressed concern that there are certain kinds of separation, such as the faculty member’s appointment, that could allow the faculty member to avoid the process by resigning. The commenter suggested adding greater clarity to this section to account for this situation.

One commenter expressed concern over the broad scope of informal resolution options available under the “settlement” sections in UWS 17.21. The commenter cited research that arbitration and mediation can be harmful to survivors of sexual misconduct, whereas restorative justice can be beneficial to both parties. The commenter expressed a preference in a narrower definition of “informal resolution” to include just restorative justice.

One commenter expressed confusion around the use of “hearing examiner” in UWS 17. The commenter was familiar with this term as a singular person presiding over a

hearing, whereas the definition in the rule made the same hearing examiner a member on a hearing committee. The commenter suggested choosing a different term other than “hearing examiner” for a person serving on a hearing committee.

One commenter thought that “formal complaint” was redundantly defined in UWS 4. The commenter noted that UWS 4.12(7) defines “formal complaint” to include that a complainant must be participating or attempting to participate in an education program or activity. UWS 4.13(4) goes on to note that a complainant must be participating or attempting to participate in an education program or activity. The commenter suggested removing UWS 4.13(4).

One commenter expressed concern about the definition of “student affairs officer” under UWS 17.02(15). The commenter claimed that the appropriate chancellor’s designee may not be affiliated with a student affairs office at a campus. The commenter suggested a broader definition of UWS 17.02(15) to cover situations where the chancellor’s designee is not affiliated with a student affairs office.

Concerns about Adequate Guidance to Officers Involved in the Grievance Process

Several commenters expressed concerns about whether the rules will require the universities to provide adequate guidance and training to the officers involved in the grievance process under the rules. One commenter expressed concern about the language in UWS 4.19(1)(e) and 17.18(5)(c), which prevent the hearing officers from making negative inferences about a party based solely on their refusal to participate in a hearing or cross-

examination. The commenter asserted that there could be legitimate, trauma-related reasons a party may choose not to participate, and hearing officers should be properly trained to consider this possibility and avoid drawing negative inferences.

Concerns about Chancellors as Decision Makers

One commenter expressed concerns about chancellors serving as decision makers under UWS 4 and 11, as well as an appeal officer under UWS 17, when addressing allegations of sexual misconduct. In the commenter's opinion, one of the purposes of a live hearing was for the decision maker to be present and see the reaction of the complainant, respondent, and other witnesses. The commenter expressed concern that the chancellor would not receive that same information based on a report of the findings prepared by the hearing officer. The commenter also expressed concern that the chancellor could be inherently biased as decision maker or appeal officer under certain circumstances. The commenter went on to suggest that UW System establish rules that allow persons other than the chancellor to serve as alternate decision maker or appeal officer.

Concerns about Interactions with Other Parts of UWS

Some commenters expressed concern about how these changes to the rules would impact other parts of UWS. One commenter expressed concern about adding procedures related to discipline other than dismissal in UWS 4. The commenter noted that UWS 6 relates to complaints and grievances against faculty, as well as that UWS 6 states that the faculty are allowed to determine the policies for discipline under these circumstances. In

the opinion of the commenter, the changes in UWS 4 were overreaching and should take on a narrower scope.

Miscellaneous Comments

One commenter appreciated that the rule drafts contained more gender-neutral language when referring to the parties involved in the grievance process. The same commenter appreciated that UWS 17 included definitions for “consent” and “sexual exploitation.” The commenter thought that the definitions were appropriate and helpful for the rule.

Several commenters noted that UWS 17.21 was listed in the draft before 17.20. The commenters suggested to either renumber the sections or change the order of the sections to make sure they appear in sequential order. Several commenters noted that UWS 4.16 had subsections (1) and (3), but no (2). The commenters suggested renumbering subsection (3) as (2). One commenter noted that UWS 4.20(1)(f) uses the pronoun “them” to refer to the hearing committee, rather than the appropriate pronoun of “it.” One commenter noted that UWS 4.23(2) utilizes Arabic numerals for its subsections, whereas the Administrative Rules Manual states that letters should be used under these circumstances. One commenter noted that UWS 4.20(1) and 11.22(1) are new sections which use (am) as a subsection. The use of (am) as a subsection is reserved for amendments to sections. The commenter suggested changing the (am) subsection to (b) and the remaining subsections in UWS 4.20(1) and 11.22(1) accordingly.

Some commenters expressed concerns about how the new rules would restrict individual campus's abilities to implement flexible procedures that suit the individual needs of the campuses. The commenter also noted that the lack of flexibility might make it difficult to adjust individual campus policies in the future in the event the federal regulations change. The commenter suggested inserting more flexibility into the rules to allow each individual campus to craft its policies and remain nimble amid the possibility of a changing regulatory landscape.

Appendix: List of Written Commenters

UW System Faculty and Staff Commenters

- Shanna Casperson, Assistant Dean of Students, UW-Platteville
- Buzz Bares, Acting Dean of Students, UW-Oshkosh
- Kara Ostlund, Director of Title IX and Compliance, UW-La Crosse
- Brian Vaughan, Senior University Legal Counsel, Office of Legal Affairs, UW-Madison
- Anne Bilder, Senior University Legal Counsel, Office of Legal Affairs, UW-Madison
- Sam Kavalier, Law Clerk, Office of General Counsel, UW System Administration
- Troy Seppelt, Assistant Vice Chancellor for Student Affairs and Dean of Students, UW-Stevens Point
- Tammy Fanning, Associate Dean of Students, UW-Superior
- Teresa O'Halloran, Title IX Coordinator and Affirmative Action Director, UW-Eau Claire

UW System Student Commenters

- Nona Gronert, UW-Madison

Wednesday, August 05, 2020

APPROVAL OF INTERIM REGENT POLICY DOCUMENT 14-2

REQUESTED ACTION

Adoption of Resolution 4., approving the Interim Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment".

Resolution 4. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Interim Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment".

SUMMARY

Title IX of the Education Amendments of 1972 requires that all educational institutions that receive federal funds of financial assistance prohibit sex discrimination in their education programs and activities (34 C.F.R. Part 106). Over the past eighteen months, the U.S. Department of Education (ED) has engaged in rulemaking to further examine and clarify schools' responsibilities in responding to reports of sex discrimination, sexual harassment, sexual violence, intimate partner violence, and stalking involving faculty, staff, and students as well as pregnant and parenting students. On May 5, 2020, the Department released a final rule with which all recipient educational institutions are required to comply by August 14, 2020.

The University of Wisconsin System is seeking interim policy changes Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment" in order to comply with the substantive and procedural requirements provided in the new federal regulations. The changes in the interim policy draft of Regent Policy Document 14-2 align the with the proposed changes in the University of Wisconsin System Emergency Rules for Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code.

Presenter(s)

- Quinn Williams, UW System General Counsel
- Katie Ignatowski, UW System Director of Compliance and Integrity
- Sarah Harebo, UW System Title IX and Clery Administrator

BACKGROUND

The changes found in Interim Regent Policy Document 14-2, “Sexual Violence and Sexual Harassment” closely mirror what is found in the proposed changes in the University of Wisconsin System Emergency Rules for Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code.

The proposed changes include revisions to Appendix A and Appendix B of Regent Policy Document 14-2, which provide templates for UW System institution policies and definitions to address the content of the Regent Policy Document. The proposed changes also create Appendix C, which outlines a procedure for investigation and resolution of formal Title IX complaints against university employees other than faculty and academic staff. Appendix C closely aligns with the language that appears in the proposed changes to the University of Wisconsin System Emergency Rules for Chapters UWS 4 and 11 of the Wisconsin Administrative Code.

Outline of Major Substantive Changes

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

The new federal regulations narrow the scope of conduct to which Title IX applies but specify that schools are not prohibited from addressing a broader scope of conduct under institution conduct codes. The University of Wisconsin System is committed to continue to address all forms of sexual misconduct, regardless of whether they fall within the scope of federal Title IX. Under the proposed changes, allegations of sexual misconduct that do not fall within the scope of Title IX will continue to be addressed using our student and employee conduct codes.

Definitions

The new federal regulations require the adoption of the definitions for sexual assault, dating violence, domestic violence, and stalking from the federal Clery and Violence Against Women Acts. Previous UWS code definitions mirrored the Wisconsin criminal statutes.

The definition of sexual harassment for Title IX purposes is redefined to include quid pro quo and “unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectionably offensive...” Prior to these changes the standard mirrored Title VII in requiring that conduct be “severe or pervasive (and objectionably offensive).” Conduct that meets the Title VII standard but does not meet the new Title IX standard will continue to be addressed under UW System conduct codes.

The new federal regulations outline the instances of sexual misconduct to which schools are required to respond. A school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's education program or activity; (3) against a person in the United States. These final regulations define “education program or activity” to include situations over which the school exercised substantial control as well as buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses. The proposed code language specifies the procedures to be used by UW System schools in addressing sexual misconduct that meets the new definition and scope of Title IX, as well as the procedures to be used in addressing sexual misconduct that falls outside of the scope of Title IX.

The proposed language adds a definition of sexual exploitation to the list of sexual misconduct that UW System schools will address. This change is in line with the majority of peer institutions, including most Big Ten universities. Sexual exploitation is defined as “a person taking nonconsensual sexual advantage of another person.” Under our current policies, such conduct sometimes falls outside of the definitions of sexual misconduct and must be addressed through other policies. This change will officially recognize sexual exploitation as a form of sexual misconduct.

Title IX Sexual Misconduct Procedures

Notice

The new federal regulations require that notice to parties of formal Title IX complaints outline the grievance process, explain the allegations of sexual misconduct with sufficient detail, include a statement that the respondent is presumed not responsible, inform parties of their right to an advisor and to review evidence, and cite to UW System code provisions that prohibit making a false statement.

Mandatory Dismissal and Discretionary Dismissal

The federal regulations define certain Title IX cases which must be dismissed by a school and certain Title IX cases which may be dismissed but are not

required to be. Universities are required to dismiss allegations that do not meet the definitions of sexual misconduct under Title IX, that did not occur during the university's education program or activity, or that occurred outside of the United States. Universities may still address these under other codes of conduct or state law. A school has the discretion to dismiss a complaint if it is formally withdrawn in writing, if the respondent is no longer enrolled or employed by the school, or if circumstances are such that it prevents the school from gathering sufficient evidence to reach a determination. A discretionary dismissal requires notice and specified reasons for discretionary dismissal of the complaint. The parties have the right to appeal a university's mandatory dismissal or discretionary dismissal of a Title IX complaint. The proposed language incorporates these changes.

Investigation

Under the federal regulations, investigations of formal Title IX complaints must be conducted by an assigned investigator and must allow the parties an opportunity to present witnesses and evidence as well as review the evidence provided. Investigators are not permitted to make official findings of responsibility but may make recommended findings. The new Title IX regulations require that official findings be made only after a hearing. The proposed language incorporates these changes.

Hearing

The federal regulations require that all postsecondary schools conduct live hearings with cross-examination conducted directly, orally, and in real time for all Title IX cases. Cross-examination is to be conducted by the party's advisor; direct party questioning is not permitted. A hearing officer must determine the relevance of each question and explain any decision to exclude a question as not relevant. At a live hearing, the institution must provide, without fee or charge, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. The proposed language incorporates these changes.

Previous Action or Discussion

UWS 4, 7, 11, and 17

The Board last discussed this topic at its July 20, 2020 meeting when it approved scope statements necessary to revise Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code. This discussion occurred after the preliminary hearing and public comment period regarding the scope statements, which the Board approved at its July 9, 2020 meeting. Prior

to that, the Board of Regents amended UWS Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code in April 2015 through Resolutions 10476, 10477, and 10478, all of which addressed the Dear Colleague Letter updates from the U.S. Department of Education.

Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"

In December 1980, the Board of Regents adopted Resolution 2297, which created Regent Policy Document (RPD) 80-8, outlining a process for institutions to report incidents of sexual harassment, as well as establishing the Regent Task Force on the Status of Women. In April and May 1981, the Board of Regents adopted Resolutions 2361 and 2384, which respectively adopted many of the task force recommendations and replaced RPD 80 -8 with RPD 81-2. Resolution 3758, adopted in April 1987, updated RPD 81 -2, which was subsequently renumbered as RPD 14 -2. The Board of Regents updated RPD 14 -2 through the adoption of Resolution 10786 in December 2016.

UW System Task Force on Sexual Violence and Harassment

In July 2014, the President of the UW System ordered the Task Force on Sexual Violence and Harassment to lead and coordinate systemwide efforts to strengthen UW System's capacity to prevent sexual violence and harassment. This Task Force reported to the Board of Regents in December 2016 to provide a variety of findings and recommendations on how to reform Board of Regents and UW System policies.

UW System Policy

In June 2018, the Board of Regents adopted Resolution 11038, which called for the UW System to create policies to provide personnel records for former or current UW System employees, document allegations and investigations of employee sexual harassment, and form appropriate reference check procedures for prospective UW System employees. This resulted in the revision of UW System Administrative Policy 1261 and UW System Administrative Policy 1275 in January 2019.

Related Policies

- Interim Regent Policy Document 14-2, "Sexual Harassment and Sexual Violence"
- Chapter UWS 4, Wis. Admin. Code: "Procedures for Dismissal"
- Chapter UWS 7, Wis. Admin. Code: "Dismissal of Faculty in Special Cases"
- Chapter UWS 11, Wis. Admin. Code: "Dismissal of Academic Staff for Cause"
- Chapter UWS 17, Wis. Admin. Code: "Student Nonacademic Disciplinary Procedures"
- UW System Administrative Policy 1261, "Personnel Files"
- UW System Administrative Policy 1275, "Recruitment Policies"

ATTACHMENTS

A) Interim Regent Policy Document 14-2

Interim Regent Policy Document 14-2 (formerly 81-2)**Sexual Violence and Sexual Harassment****SCOPE**

This policy applies to all University of Wisconsin System institutions and programs. This policy covers sexual harassment and sexual violence, including but not limited to sexual harassment, sexual assault, stalking, dating violence, domestic violence, and sexual exploitation. ~~The policy covers the following conduct: sexual harassment, sexual assault, stalking, dating violence, and domestic violence.~~

PURPOSE

The mission of the University of Wisconsin System and its individual institutions can be realized only if the University's teaching, learning, research, and service activities occur in living, learning, and working environments that are safe and free from violence, harassment, disruption, and intimidation. The purpose of this policy is to reflect the Board of Regents' strong commitment to promoting an environment that is free from sexual violence and sexual harassment.

POLICY STATEMENT

It is the policy of the Board of Regents of the University of Wisconsin System to promote an environment free from incidents of sexual violence and sexual harassment. To address these incidents, the Board of Regents directs UW institutions to adopt policies, practices, and educational programs that serve to prevent, respond to, and redress incidents of sexual violence and sexual harassment. In addition, this policy directs institutions to identify factors that may contribute to a culture in which incidents of sexual violence and sexual harassment can exist, and to address these issues to advance a safe environment that supports healthy and respectful interactions and relationships.

This policy is ~~consistent in compliance~~ with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. This policy is also consistent with the regulations related to the Violence Against Women Act (VAWA), the Jeanne Clery Act, as well as relevant state code provisions regarding the enforcement of sexual misconduct disciplinary procedures (See Chapters UWS 4, 7, 11, and 17) as well as other state and federal laws. In accordance with these requirements, the University of Wisconsin System is responsible for taking immediate and effective steps to respond to sexual violence and sexual harassment. ~~This policy is also consistent with the regulations addressed by the Violence Against Women Act (VAWA) and the Jeanne Clery Act.~~

Regent Policy Documents 14-6 and 14-10 cover discrimination on the basis of other protected categories.

OVERSIGHT, ROLES, AND RESPONSIBILITIES

Each Chancellor or designee shall be responsible for implementing institutional procedures consistent with this policy.

Each UW institution is required to adopt a Sexual Violence and Sexual Harassment policy that is widely available and disseminated to all students and employees. **Appendix A** provides a template policy for institutions to customize and adopt. The institutional policy must contain, at a minimum, the following provisions:

1. Accommodations Supportive Measures. Information for students and employees concerning the availability of academic and employment ~~accommodations~~ supportive measures related to the individual as a ~~victim~~/complainant or respondent.
2. Amnesty. ~~Consistent with state law, A~~ provision to exempt sexual violence or sexual harassment victims complainants, respondents, and witnesses ~~of sexual violence~~ from receiving citations or being subjected to the student disciplinary process for underage consumption of alcohol under specified circumstances.
(<https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>).
3. Assessment. A description of the methodology for how the institution will assess the efficacy of its policy and educational efforts undertaken as part of this policy.
4. Collection of Data. In accordance with state and federal law, a statement that statistics on the number of reports received by employees alleging sexual assault of a student shall be reported in the UW System Sexual Assault Reports consistent with § 36.11(22), Wis. Stats., and the federal Jeanne Clery Act.
5. Confidentiality. Identification of employees or affiliates who may maintain in confidence any report of sexual violence or sexual harassment. Limitations or barriers to confidentiality of other employees should be addressed.
6. Definitions. Relevant words and phrases used in the policy should be defined consistent with applicable System rules and policies. (Definitions are included in **Appendix B**):
7. Education/Training. Identification of mandatory education and training concerning sexual violence and sexual harassment.
8. False Accusations. Information about response and consequences when an individual knowingly makes a material misstatement of fact in connection with a report of sexual violence or sexual harassment. The information should indicate that the filing of a complaint that does not result in a finding of prohibited conduct, alone, is not ~~alone~~ evidence of intent to file a false report.
- ~~8-9.~~ Informal Resolution. A description of the informal Title IX resolution process, if offered.
10. Office for Civil Rights Complaint. A description of how individuals can file a complaint with the U.S. Department of Education, Office for Civil Rights under Title IX.
- ~~9-11.~~ Official with Authority: Identification of those individuals who are considered ~~Any~~ officials with authority of the university who has the authority to institute corrective measures on behalf of the university.
- 10.12. Procedures. Reference to, or inclusion of, institutional policies governing procedures for reporting allegations of sexual violence and sexual harassment, including information for reporting to campus and local police as well as for filing a formal Title IX complaint.
- ~~11.13.~~ Policy Statement. A statement expressing the institution's commitment to promoting an environment free from incidents of sexual violence and sexual harassment.
- 12.14. Prohibition against Retaliation. A statement explicitly prohibiting retaliation as defined in Appendix B. against those who are involved in the reporting of an incident of sexual violence or harassment, and identification of remedies for those who have been subject to retaliation under the policy.
- ~~13.15.~~ Prompt Resolution. Inclusion of language that reflects the institution's efforts to pursue the prompt resolution of reports of sexual violence and sexual harassment.
- ~~14.16.~~ Purpose Statement. A statement that indicates ~~that~~ sexual violence and sexual harassment are prohibited and ~~that~~ expresses the institution's commitment to prevent and promptly and effectively respond to and redress incidents of sexual violence and sexual harassment, and ~~that~~ states how such actions support the System and institutional missions.

- ~~15.17.~~ Recordkeeping. A description of how records of reports of sexual violence and sexual harassment will be maintained.
- ~~16.18.~~ Reporting Options and Obligations. Identification of employees to whom or offices to which an individual can report an allegation of sexual violence and sexual harassment, including the U.S. Department of Education, Office for Civil Rights; likewise, identification of employees who are obligated ~~by law~~ to notify an “Official with Authority” ~~university officials~~ that they have received such a report.
- ~~17.19.~~ Resources. A description of counseling, medical, legal, and other resources for complainants, ~~victims, and accused persons~~ and respondents.
- ~~18.20.~~ Responsible Employees. Identification of those individuals who are considered “responsible employees” as defined in Appendix B, under the Department of Education’s interpretation of Title IX. A responsible employee is not necessarily an “Official with Authority” to institute corrective measures on behalf of the university.
- ~~19.21.~~ Roles and Duties of University Officials and Employees. Identification of the role and responsibility of institutional ~~employees officials~~ regarding reporting, prevention, and response involving allegations of sexual violence and sexual harassment.
- ~~20.22.~~ Sanctions. Identification of potential sanctions for students and employees who are found responsible under the policy.
- ~~21.23.~~ Scope Statement. Provision of a scope statement covering all institutional students and employees in university sponsored and supported activities. ~~programs and activities supported by or sponsored by the institution.~~
- ~~24.~~ Title IX Committee. Provision for a campus Title IX Committee, tasked with the responsibility to, among other things, support the efforts of the Title IX Coordinator, implement the institutional Sexual Violence and Sexual Harassment policy, perform assessment, and address campus climate and culture issues.
- ~~— Title IX Complaint. Provision explaining when campus policy regarding sexual harassment and sexual violence may be considered a Title IX Complaint requiring specific complaint and disciplinary procedures.~~
- ~~22.—~~
- ~~25.~~ Title IX Coordinator. Identification of the name and contact information for the institutional Title IX Coordinator and any Deputy Title IX Coordinators.
- ~~23.—~~

Related Regent Policies and Applicable Laws

RPD 14-3, “Equal Opportunities in Education: Elimination of Discrimination Based on Gender”

RPD 14-6, “Discrimination, Harassment, and Retaliation”

RPD 14-7, “Implementation of Statute on Discrimination Against Students”

RPD 14-8, “Consensual Relationships”

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.; 34 C.F.R. Part 106)

§ 36.11(22), Wis. Stats., Orientation Program; Information on Sexual Assault and Harassment

Violence Against Women Act (1994) 42 U.S.C. §§ 1371-14040

(See definitions in **Appendix B** for other statutory references.)

History: Res. 2297, adopted 12/05/1980, created Regent Policy Document 80-8. Res. 2361, adopted 05/08/1981, created Regent Policy Document 81-2, replacing Regent Policy Document 80-8; Res. 3758, adopted 04/10/1987, amended Regent Policy Document 81-2; subsequently renumbered 14-2; Res. 10786, adopted 12/08/2016, amended Regent Policy Document 14-2; Res. [insert] adopted [insert], amended Regent Policy Document 14-2-

Interim RPD 14-2 Appendix A: Template for UW Institutions' Policies

RPD 14-2 Appendix A: Template for UW Institutions' Policies Bookmark Anchor

UW-[institution] Sexual Violence and Sexual Harassment Policy

UW-[institution] Sexual Violence and Sexual Harassment Policy Bookmark Anchor

Policy Statement

The mission of University of Wisconsin-_____ is to provide a teaching, learning and working environment in which faculty, staff, and students can discover, examine critically, preserve, and transmit the knowledge, wisdom, and values that will improve quality of life for all. To promote these institutional values, UW-_____ is committed to creating and maintaining a community environment that is free from sexual violence and sexual harassment.

Purpose and Scope of Policy ~~and Scope of Policy~~

This policy prohibits acts of sexual violence and sexual harassment on university property, at university-sanctioned or university-affiliated events, and where off-campus conduct affects a member of the university community. This policy applies to all university students and employees. The university is committed to educating its community and to promptly and effectively respond to and redress conduct that violates this policy. This policy provides the UW- _____ community with information and resources to identify, report, and respond to sexual violence and sexual harassment including sexual assault, sexual exploitation, stalking, and dating and domestic violence. These efforts support the overall missions of UW- _____ and the UW System.

This policy applies to:

- A. University sponsored and supported activities held both on and off campus, including those held in other municipalities, states, and nations.
- B. All students while they are on campus or if their off-campus conduct meets any of the following criteria:
 - 1. The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings;
 - 2. The conduct indicates that the student presented or may present a danger or threat to the health or safety of self or others; or

3. The conduct demonstrates a pattern of behavior that seriously impairs the University's ability to fulfill its teaching, research, or public service missions.
- C. All other members of the University community (including, but not limited to employees, volunteers, visitors, guests, contractors, and third-party vendors) while they are on campus or engaged in activities associated with University sponsored and supported activities.

Title IX Statement

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance.

I. Definitions

(See Appendix B).

II. Role and Duties of University Officials and Employees

A. Title IX Coordinator

The duties of the UW-_____ Title IX Coordinator are described in the institutional position description. Those duties include: receiving reports of sexual violence and sexual harassment; maintaining appropriate records; providing or supporting the provision of appropriate education and training; maintaining ongoing communication with any Deputy Title IX Coordinators and the Title IX Committee; investigating allegations of sexual violence and sexual harassment, as appropriate; coordinating the effective implementation of supportive measures; ensuring that applicable policies, resources, and other information is up-to-date and properly disseminated. The duties of the Title IX Coordinator will be guided by principles of trauma-informed care and ensuring equity and due process for complainants and respondents.

B. Title IX Committee

The Title IX committee at UW-_____ meets on a _____ *[Insert period of time, such as monthly]* basis to discuss policy implementation and revision; to assess the effectiveness of trainings and educational programming; to address campus climate issues; and to provide guidance to the Title IX Coordinator. The following are offices represented on this committee: *[Identify, refer to Title IX Committee Bylaws]*.

C. Responsible Employees

UW-_____ has designated individuals with the following titles as “~~R~~esponsible ~~e~~mployees” under this policy: *[Identify]*. Responsible Employees are not necessarily “Officials with Authority” to institute corrective measures on behalf of the university. These individuals should be properly trained to do the following:

1. Be familiar with definitions of sexual violence and sexual harassment.
2. Be familiar with this and other related policies.
3. Be prepared to respond should an individual report an incident of sexual violence or sexual harassment.
4. Be familiar with resources on campus to which to refer a reporting individual.

D. Official with Authority

UW-_____ has designated individuals with the following titles as “~~O~~fficials with ~~a~~Authority,” under this policy, as they have the authority to institute corrective measures on behalf of the university. All ~~o~~fficials with ~~a~~Authority are also Responsible Employees.

~~D~~E. All Employees

Regardless of whether they are a “Responsible Employee” or an “Official with Authority,” all employees are required to comply with the following reporting obligations.

In accordance with § 36.11(22), Wis. Stats., employees who witness an act of sexual assault, or who receive a first-hand report of sexual assault from an enrolled student, must report that information to the Office of the Dean of Students or designee, Office of the Dean of Students. “Confidential ~~e~~Employees”, described below, are only required to report the occurrence of the sexual assault without any personally identifying information about the complainant or respondent.

All employees must comply with Executive Order 54 which requires that university employees report incidents of child abuse and neglect which they ~~observe or witness~~observes or learns of in the course of their employment. Such reports must be personally and immediately made to law enforcement or the county department of social services or human services.

[https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf]. ~~Link to information about EO 54.~~

III. Reporting an Incident of Sexual Violence or Sexual Harassment

A. Reporting Options

Those who have been subjected to an incident of sexual violence or sexual harassment, or who have received a report of or witnessed an incident of sexual violence or sexual harassment, have several options for reporting the incident:

1. ~~The individual~~Someone The individual who has been subjected to an incident of sexual violence or sexual harassment may elect not to report or may only seek confidential services. (unless the individual is an employee who has information about a sexual assault as described in II.D. above, an employee who has information about child abuse or neglect as described in II.D above, or an employee who has been designated a “Responsible Employee” as described in II.C above), or an employee with authority to institute corrective measures on behalf of the university as described in II. — above) :

2. ~~The individual may report information to a confidential employee:~~
~~[Name, contact information of confidential advisors]~~

~~23.~~ The individual may report information to the campus Title IX Coordinator or other designated reporting office:

~~[Name, contact information of institutional Title IX Coordinator].~~

~~34.~~ The individual may report information to campus law enforcement:
~~[Name, contact information of campus law enforcement].~~

~~54.~~ The individual may report information to local law enforcement:
~~[Name, contact information of local law enforcement].~~

Note: An individual may make a report to one or more of the offices or individuals noted above.

Individuals have the option to file a complaint with the **U.S. Department of Education, Office for Civil Rights:**

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

B. Amnesty for Students

Individuals, including complainants, respondents, and witnesses, who have made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing regarding incidents of sexual harassment or sexual violence generally will not be issued citations by campus law enforcement or subject to disciplinary sanctions for alcohol violations arising out of the same facts and circumstances of the alleged incident unless the institution determines that the violation was egregious, and/or placed the health or safety of any person at risk, and was beyond the amnesty provided by state law. (See

<https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>.)

~~Complainants, victims, and witnesses Any student who has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing to regarding incidents of sexual violence, including sexual harassment, sexual assault, dating violence, domestic violence, stalking or sexual exploitation will not be issued citations or subject to disciplinary sanctions for violations of university policy at or near the time of the incident unless the institution determines that the violation was egregious, including actions that place the health or safety of any other person at risk.~~

C. Confidentiality

Individuals, including ~~vietims~~complainants, who report to any of the offices or individuals noted above, or to any other university employee, except confidential employees or resources as defined in Appendix B, those noted below, cannot be assured absolute confidentiality. However, information provided in the report and in any subsequent, related proceeding ~~will be maintained in a confidential manner; only be shared with~~ those individuals who have a need to know to fulfill obligations consistent with university policies or laws ~~will be privy to certain information.~~

D. Resources and ~~Aeeommodations~~Supportive Measures

1. ~~Aeeommodations~~Supportive Measures

The university will work with individuals involved in alleged incidents of sexual violence and sexual harassment to undertake appropriate measures to assist in their safety and wellbeing. These may include: no-contact directives, academic or work modifications, and relocation of living or working space. Supportive measures are available to complainants and respondents.

2. Resources

The university offers a variety of resources that are available to individuals involved in incidents of sexual violence or sexual harassment, including the following:

[List of resources including medical, advocacy, counseling, tutoring.]

E. Procedures

1. University Procedures:

- a) ~~1-~~ When a report is made to the Title IX Coordinator alleging that a student has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Emergency Rule Chapter UWS 17, Wis. Admin. Code].
- b) ~~2-~~ When a report is made to the Title IX Coordinator alleging that a faculty member has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Emergency Rule Chapters UWS 4 and 7, Wis. Admin. Code and UWS 6, Wis. Admin. Code].
- c) ~~3-~~ When a report is made to the Title IX Coordinator alleging that a member of the academic staff has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Emergency Rule Chapters UWS 11 and 13, Wis. Admin. Code].
- d) ~~4-~~ When a report is made to the Title IX Coordinator alleging that a member of the university staff has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Appendix C].
- e) When a report is made to the Title IX Coordinator alleging that any other university employee ~~or who does not fall into any of the above categories~~ has engaged in an act of sexual violence or sexual harassment, ~~the Title IX Complaint and disciplinary procedure~~, the procedures linked here apply. [Link to Appendix C].

2. University Title IX Informal Resolution Procedures

At any time prior to reaching a determination regarding responsibility for a formal Title IX Complaint, the university may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the university –

- a) Provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b) Obtains the parties' voluntary, written consent to the informal resolution process; and
- c) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The university may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal Title IX complaints. ~~of sexual harassment consistent with this section.~~ Similarly, the university may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.

3. Law Enforcement Procedures:

- a) ~~5.~~ When a report is made to campus law enforcement alleging that an individual has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to campus law enforcement procedures].
- b) ~~6.~~ When a report is made to local law enforcement alleging that an individual has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to local law enforcement procedures].

signed

E. Procedures

~~5. When a report is made to campus law enforcement alleging that an individual has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to campus law enforcement procedures].~~

~~6. When a report is made to local law enforcement alleging that an individual has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to local law enforcement procedures].~~

~~When a report is made to more than one of the offices noted above, the offices will endeavor to cooperate as they are able. Attempts will be made to limit the number of times a complainant or respondent is required to repeat information about the allegations.~~

~~1. When a report is made to the Title IX Coordinator alleging that a student has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Chapter UWS 17, Wis. Admin. Code].~~

~~2. When a report is made to the Title IX Coordinator alleging that a faculty member has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply.
[Link to Chapters UWS 4, 6, and 7, Wis. Admin. Code].~~

~~3. When a report is made to the Title IX Coordinator alleging that a member of the academic staff has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply.
[Link to Chapters UWS 11 and 13, Wis. Admin. Code].~~

~~4. When a report is made to the Title IX Coordinator alleging that a member of the university staff has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply.
[Link to University Staff Policy].~~

FF. Prompt Resolution

The university offices and employees ~~individuals receiving that receive~~ a report of sexual ~~violence~~ assault or sexual harassment will endeavor to resolve the matter in a timely manner, with consideration to available information and context.

1. Time Frames

Best efforts will be made for the university to complete an informal resolution process or an investigation of a complaint within ninety (90) calendar days. The ninety (90) calendar day timeframe and any other timeframe set by the university related to appeals and conclusion of the grievance process may be extended for good cause. Good cause may include but is not limited to considerations such as the absence of a party or party's advisor, witness, concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The complainant and the respondent will be notified in writing of an extension for good cause.

12. Potential Sanctions

The procedures identified above provide for disciplinary action against ~~employees~~ staff members and students who are found responsible for violating a ~~U~~ university policy. ~~For students, such sanctions include~~ Such sanctions may include restrictions on a course or program, suspension, expulsion, suspension and dismissal from academic duties those listed in Chapter UWS 17.10, Wis. Admin. Code provides a more comprehensive list of potential sanctions against students. Employee sanctions may include measures that range from a written reprimand through dismissal. ~~suspension from duties and dismissal.~~

23. Notice of Outcome

Both the complainant and the respondent will be provided with notice of the outcome of the final resolution. ~~of the complaint.~~

GG. Prohibition Against Retaliation

Prohibited retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

~~This policy prohibits retaliation against an individual who reports, assists an individual in reporting, or participates in proceedings involving an allegation of sexual violence or sexual harassment. Retaliation under this policy includes threats, intimidation, or adverse employment/academic actions. This includes but is not limited to complainants, respondents, witnesses, reporting parties, and Title IX personnel.~~ Those who believe they have been subjected to retaliation under this section may report the allegations to the Title IX Coordinator or Deputy. Those who believe they have been subjected to retaliation that would also constitute a crime may

report to campus law enforcement or campus safety office, campus law enforcement, or local law enforcement. (See contact information above.)

HH.- False Accusations

Knowingly making a material misstatement of fact in connection with reporting under this policy may subject the individual to disciplinary action. Anyone who believes ~~that~~ they have been the subject of a false complaint may meet with the Title IX Coordinator to discuss the allegations. The filing of a complaint that does not result in a finding of prohibited conduct, alone, is not ~~alone~~ evidence of the intent to file a false complaint.

IK. Responsible Employee/Officials with Authority

A university may designate Responsible Employees to report incidents of sexual misconduct and Officials with Authority to implement corrective measures on the university's behalf. Notice to these designated individuals constitutes a university's actual knowledge and triggers the university's response obligations.

IV. Education and Training

The Title IX Coordinator will be primarily responsible for facilitating the training and educational programs for ~~to~~ the campus community. At a minimum, all students and employees will be required to complete the campus-supported on-line training covering issues of sexual violence and sexual harassment.

The Chancellor or designee will identify and offer more in-depth training for employees who are ~~executives, supervisors, managers, directors, department heads~~ Officials with Authority, ~~Responsible~~ Employees, Title IX Personnel, and those connected with the disciplinary process.

All Title IX personnel, including the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution, shall receive training on the definitions of sexual violence and sexual harassment, scope of the institution's program or activity, how to conduct an investigation and grievance process, how to serve impartially, and how to avoid conflicts of interest and bias. All decision-makers shall receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence. All investigators shall receive training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence. The institution will post a link to all training materials whether developed internally or purchased externally, on their website for public viewing. All materials used to train Title IX personnel will be maintained for at least seven (7) years.

V. Record Keeping and Data Collection

As noted above, the Title IX Coordinator will maintain records of reports and resolution of sexual violence and sexual harassment consistent with the institutional records-retention policy, which must be at least seven (7) years. In addition, the Title IX Coordinator will track compliance with mandatory training programs, and maintain a list of training and education offered on campus.

The institution will post a link to all training materials for Title IX Personnel (including the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution), whether developed internally or purchased externally, on their website for public viewing. All materials used to train Title IX Personnel will be maintained for at least seven (7) years.

The UW-_____ Police Department or other appropriate office will collect, maintain, and submit the Annual Security Report, consistent with the federal Clery Act.

The Office of the Dean of Students, or other appropriate office, will collect appropriate data and compile the state report required under § 36.11(22), Wis. Stats.

VI. Assessment

The *(insert campus office name)* will conduct a study that seeks to gather data and information concerning sexual violence and sexual harassment ~~on or near campus~~. Efforts will be made to conduct such a study once

every ____ years. All students and employees are encouraged to participate. The Title IX office will also work to design methods for effectively evaluating the outcomes of campus training and educational programming. It is imperative that UW System institutions proactively integrate empirically informed assessment and evaluations into sexual violence and sexual harassment prevention and awareness programs to measure whether they are achieving the intended outcomes.

Interim RPD 14-2 Appendix B: Definitions to be Included in Institutional Policies

RPD 14-2 Appendix B: Definitions to be Included in Institutional Policies Bookmark Anchor

Advisor. An individual who assists a complainant or respondent in any grievance proceeding or related meetings. This individual may or may not be an attorney.

Complainant. ~~means a~~Any individual who is alleged to be the subject of ~~sexual misconduct~~sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy. ~~Any individual harassment who is reported to have been subjected to sexual harassment, sexual assault, dating violence, domestic violence, or stalking, as defined in the relevant Administrative Code provisions or policies. See, e.g., Chs. UWS 4.015 (faculty), UWS 11.015 (academic staff), and UWS 17.02(2m) (students).~~

Confidential Employee. Any employee, who is a licensed medical, clinical, ~~or~~ ~~or~~ mental health professional, when acting in that role in the provision of services to a patient or client who is a university student or employee. A Confidential Employee will not report specific information concerning a report of sexual violence or sexual harassment received by that Employee in the Employee's professional capacity unless with the consent of the reporting individual or unless required by the Employee's license or by law.

Confidential Resource. Individuals or agencies in the community, whose professional license, or certification permits that individual or agency to preserve the confidentiality of the patient or client.

Consent. Words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in this policy. ~~have sexual intercourse or sexual contact.~~ A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness. ~~[§. 940.225(4), Wis. Stats.].~~

Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. ~~Violence committed in a "dating relationship," which is defined as a romantic or intimate social relationship between two adult individuals; "dating relationship" does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. A court shall determine if a dating relationship existed by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship [§ 813.12(1)(ag), Wis. Stats.].~~

Domestic Violence. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075).

Any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver's care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common [§§ 813.12 (1)(am) and 968.075, Wis. Stats.]:

1. Intentional infliction of physical pain, physical injury, or illness.
2. Intentional impairment of physical condition.
3. A violation of the state statute regarding sexual assault [§ 940.225(1), (2) or (3), Wis. Stats.].
4. A violation of the state statute regarding stalking [§ 940.32, Wis. Stats.].
5. A violation of the state statute regarding damage to property [§ 943.01, Wis. Stats.], involving property that belongs to the individual.
6. A threat to engage in any of the conduct under 1 through 5 listed above [§§ 813.12 (1)(am) and 968.075, Wis. Stats.].

Employee. Any individual who holds a faculty, academic staff, university staff, limited, student employment, employee-in-training, temporary, or project appointment. (See, e.g., UW System Administrative Policy 1225 (formerly GEN 0), General Terms and Definitions (<https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/>))

Education Program or Activity. For purposes of a Title IX Complaint only, locations, events, or circumstances at which the university exercised substantial control over both the faculty member and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

Executive Order 54. Executive Order issued by Governor Walker in 2011 requiring that university employees report incidents of child abuse and neglect which they observe or observe or witness ~~learn of~~ in the course of their employment. Such reports must be personally and immediately made to law enforcement or the county department of social services or human services. (https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf)

Formal Complaint. For the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against a faculty member and requesting that the university investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in

person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

Hostile Environment. ~~A hostile work, academic, or program-related environment is created when one engages in harassment that consists of unwelcome verbal or physical conduct directed at another individual because of that individual's gender, and that has the purpose or effect of creating an intimidating, hostile, or offensive work, academic, or program-related environment or has the purpose or effect of substantially interfering with that individual's work or academic performance. Substantial interference with an employee's work or academic performance or creation of an intimidating, hostile, or offensive work, academic, or program-related environment is established when the conduct is such that a reasonable person under the same circumstances as the student or employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work or academic performance or to create an intimidating, hostile, or offensive work or learning environment. [See, e.g., § 111.36(1)(b), Wis. Stats.]~~

Incapacitation. The state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; and capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

~~As it applies to this policy, the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.~~

Official with Authority. Any official of the university who has the authority to institute corrective measures on behalf of the university.

Office for Civil Rights. The U.S. Department of Education office that is responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other education-based discrimination acts. <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

Preponderance of the Evidence. Information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than "clear and convincing evidence" and is the minimum standard for a finding of responsibility. ~~[Sections UWS 17.02(13), UWS 11.015(7), UWS 4.015(7), and UWS 7.015(5), Wis. Admin. Code]~~

Respondent. An individual who has been reported to be the perpetrator of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy. A student who is accused of violating a policy under Chapter UWS 17, Wis. Admin. Code, or an employee who is accused of violating a policy under Chapters UWS 4, 7, or 11, Wis. Admin. Code.

Responsible Employee ~~(Official with Authority).~~ Any employee (other than a "confidential resource"):

1. Who has the authority to take action to redress sexual misconduct; or
2. Who has been given the duty of reporting incidents of sexual misconduct by students or employees to the Title IX coordinator or other appropriate school designee; ~~or~~
3. ~~Who a student could reasonably believe has this authority or duty. April 29, 2014 “Dear Colleague Letter”, available at <http://www2.ed.gov/about/offices/list/ocr/does/qa-201404-title-ix.pdf>.~~

Retaliation. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. ~~or 17~~

~~An adverse action taken against an individual in response to, motivated by, or in connection with an individual’s complaint of discrimination or discriminatory harassment, participation in an investigation of such complaint, and/or opposition of discrimination or discriminatory harassment in the educational or workplace setting.~~

Sex Discrimination. Discrimination on the basis of sex or gender. Sexual harassment and sexual assault are forms of sex discrimination. [See 20 USC §§ 1681-1688]

Sexual Assault. An offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).

- a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- b) Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
- d) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)

~~Sexual contact or sexual intercourse with another person without the consent of that person:~~

~~1. FIRST DEGREE SEXUAL ASSAULT. Engaging in any of the following constitutes First Degree Sexual Assault:~~

- ~~a. Sexual contact or sexual intercourse with another person without consent of that person and that causes pregnancy or great bodily harm to that person.~~
- ~~b. Sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.~~
- ~~c. Sexual contact or sexual intercourse with another person without the consent of that person by use or threat of force or violence, aided or abetted by one or more persons.~~

~~2. SECOND DEGREE SEXUAL ASSAULT. Engaging in any of the following constitutes Second Degree Sexual Assault:~~

- ~~a. Sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.~~
- ~~b. Sexual contact or sexual intercourse with another person without consent of that person causing injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.~~
- ~~c. Sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which~~

renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

d. Sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.

e. Sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

f. Sexual contact or sexual intercourse with another person without the consent of that person, aided or abetted by one or more other persons.

3. ~~THIRD DEGREE SEXUAL ASSAULT. Sexual intercourse with a person without the consent of that person.~~

4. ~~FOURTH DEGREE SEXUAL ASSAULT. Sexual contact with a person without the consent of that person.~~ [§ 940.225, Wis. Stats.]

Sexual Contact. Intentional touching, whether direct or through clothing, if that intentional touching is for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under § 940.19(1) or § 940.225(5)(b)(1), Wis. Stats.

Sexual Exploitation. Occurs when an individual attempts, takes, or threatens to take nonconsensual sexual advantage of another person. Examples include, but are not limited to:

(a) Without the knowledge and consent of all participants –

1. observing, recording, or photographing private body parts or sexual activity of one or more persons;

2. allowing another person to observe, record, or photograph sexual activity or private body parts of one or more persons; or

3. otherwise distributing recordings, photographs, or other images of the same of one or more persons;

(b) Masturbating, touching one's genitals, or exposing one's genitals in another person's presence without the consent of that person, or inducing another person to do the same.

(c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual contact or sexual intercourse;

(d) Inducing incapacitation through deception for the purpose of making another person vulnerable to non-consensual sexual activity;

(e) Coercing another person to engage in sexual activity for money or anything of value;

(f) Threatening distribution of the following, to coerce someone into sexual activity or providing money or anything of value:

1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more persons, or

2. Other information of a sexual nature (for example, may include but is not limited to, sexual history or sexual orientation).

Sexual Harassment. Conduct on the basis of sex that satisfies one or more of the following:

a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct;

- b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard:
1. Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity; or
 2. Is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an university sponsored or supported activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.
- ~~— An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct;~~
- ~~— Definitions:~~
- ~~— Title IX: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity.~~
 - ~~— Employment – Title VII and non Title IX sexual misconduct: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the institution’s education program or activity.~~
 - ~~— All allegations reviewed under the Title VII definition of sexual harassment hostile environment will use the procedures outlined in the relevant employment policies and code.~~
 - ~~— “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).~~

Madison’s Proposed Sexual Harassment Definition:

Conduct on the basis of sex that satisfies one or more of the following:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or educational experience, (2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such an individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, hostile, or offensive working or learning environment. [Adapted from 29 C.F.R. § 1604.11 (1980).]

Sexual Intercourse. Penetration, as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening either by the defendant or upon the defendant’s instruction [§ 940.225(5)(e), Wis. Stats.].

Sexual Violence. The phrase, as used in this policy, refers to incidents involving sexual assault, ~~sexual harassment, sexual exploitation, stalking,~~ dating violence, ~~and~~ domestic violence, stalking, and sexual exploitation.

Stalking. Engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Intentionally engaging in a course of conduct that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household [§. 940.32, Wis. Stats.].

Student. “Student” means any person who is registered for study in a University of Wisconsin System institution for the academic period in which the alleged act of sexual violence or sexual harassment occurred, or between academic periods for continuing students. [See [Chapter UWS 17.02\(14\), Wis. Admin. Code.](#)]

Title IX. Title IX of the Education Amendments of 1972 (20 U.S.C. sec. 1681 et seq.; 34 C.F.R. Part 106)(as amended) is a federal law that states, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” [20 U.S.C. § 1681\(a\).](#)

Title IX Misconduct: A report of sexual harassment or sexual violence under this policy will be considered a Title IX Misconduct when a formal complaint (as defined in this section) is either filed by a complainant or signed by the Title IX Coordinator and the alleged conduct meets the definition of sexual harassment, sexual assault, dating violence, domestic violence, or stalking as defined in 34 C.F.R. 106.30, occurred within a university “education program or activity” (as defined in this section) and occurred against the complainant while in the United States; and the complainant is participating in or attempting to participate in a university education program or activity at the time they file the formal complaint. Title IX Complaints will follow procedures as detailed Chs. UWS 4.11-24 (faculty), UWS 11.13-26 (academic staff), UWS 17.16-21 (students), and Appendix C (university employees other than faculty or academic staff).

Title IX Coordinator (and Deputies). An employee designated to coordinate compliance with Title IX, who plays an important role in an institution’s efforts to ensure equitable opportunity for all students and employees, and who works with school officials to remind the school community that students and employees must have equal access to all programs. (~~Adapted and revised from April 24, 2015, “Dear Colleague Letter” available at <http://www2.ed.gov/about/offices/list/oea/letters/colleague-201504-title-ix-coordinators.pdf>~~).

Trauma-Informed Care. Trauma-informed care reflects an understanding of trauma and emphasizes creating services and programs that are sensitive and directly responsive to the trauma that many victims and survivors experience following a violent crime. Trauma-informed care programs identify and limit potential triggers to reduce their re-traumatization and protect their mental and emotional health. <https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers>.

Trauma-informed care is an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma. Trauma-informed care also emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors rebuild a sense of control and empowerment. See <http://www.traumainformedcareproject.org/resources/SAMHSA%20TIC.pdf>; and http://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_building_cultures-of-care.pdf.

A process that employs trauma-informed care accounts for the impact of trauma but does not recognize symptoms of trauma as evidence that a particular incident did or did not occur.

Violence Against Women Act (VAWA). Federal law enacted in 1994, which promotes the investigation and prosecution of violent crimes against women, among other objectives. Recently, it ~~affected~~ enacted amendments to the Clery Act [[42 U.S.C. §§ 13701-14040](#)], through the Campus Sexual Violence Elimination Act (SaVE) provision, Section 304.

Interim RPD 14-2 Appendix C: Policy for Investigation and Resolution of Formal Title IX Complaints Against

University Employees Other Than Faculty and Academic Staff

Application of this policy. This policy applies to the investigation and resolution of formal Title IX complaints filed against university employees other than faculty and academic staff employees. This includes employees who otherwise do not have the right to a formal disciplinary process. The disciplinary process in Chapter UWS 4 applies to faculty employees and the process in Chapter UWS 11 applies to academic staff employees. The university may discipline an employee up to and including dismissal for cause for Title IX misconduct. The disciplinary process for employee sexual misconduct that is outside the scope of Title IX, and related definitions, are found in separate university policies.

The disciplinary procedure in this policy for Title IX misconduct will be used only when all of the following requirements are met:

- (1) There is a formal complaint alleging Title IX misconduct on the basis of sex.
- (2) The conduct occurred in the United States.
- (3) The conduct occurred within a university education program or activity.
- (4) The complainant must be participating in or attempting to participate in the education program or activity of the university at the time of filing the complaint.
- (5) The complainant or Title IX coordinator have submitted a formal complaint.

The employee is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process. The university may dismiss or discipline an employee for Title IX misconduct only after due notice and hearing. The burden of proof is on the university administration.

Definitions. As used in this policy, the following terms shall have the meaning given below:

- (1) "Complainant" means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.
- (2) "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in this section. A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.
- (3) "Consult" or "consulting" means thoroughly reviewing and discussing the relevant facts and discretionary issues.
- (4) "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the

length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(5) "Domestic violence" means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075).

(6) "Education program or activity" means, for purposes of a formal complaint only, locations, events, or circumstances at which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

(7) "Formal complaint" is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against an employee and requesting that the university investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

(8) "Incapacitation" means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; and capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

(9) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."

(10) "Respondent" means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.

(11) "Sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).

a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.

b) Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

- c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
- d) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)

(12) “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

- a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct;
- b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard:
 - 1. Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.

(13) “Stalking” means engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

(14) “Title IX misconduct” means sexual harassment, sexual assault, stalking, dating violence, and /or domestic violence.

Disciplinary Sanctions. The disciplinary sanctions that may be imposed for misconduct under this policy range from a written reprimand through dismissal.

Dismissal of Formal Complaint and Related Appeal.

(1) The university must dismiss a formal complaint consisting of allegations that:

- (a) Would not constitute Title IX misconduct if proved;
- (b) Did not occur in a university program or activity; or
- (c) Did not involve actions against someone physically located in the United States.

(2) The university may dismiss a formal complaint when:

- (a) The complainant formally requests in writing to withdraw the formal complaint;
- (b) The employee is no longer employed by the university; or
- (c) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal complaint.

(3) The university generally shall decide whether to dismiss a formal complaint within thirty (30) days of receipt of the formal complaint, but the university may extend that timeline as necessary. If a formal complaint is dismissed, then the university must provide written notice of the dismissal and reasons therefore to the complainant and respondent if notified of the formal complaint. Within twenty days of receipt of the notice of dismissal, the complainant or respondent may appeal the dismissal by filing a written appeal with the chancellor’s designee (hereinafter “chancellor’s designee”). Dismissal of a Title IX formal complaint does not preclude

the university from otherwise pursuing conduct charges against the employee under other university policies. The appeal process is outlined in the Appeal to Chancellor section below.

Investigation.

(1) Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.

(2) The investigator shall provide the complainant and the respondent with a notice of investigation. The notice must include:

- (a) The grievance process, including informal resolution options;
- (b) The allegations of Title IX misconduct with sufficient detail for the respondent to prepare a response to the allegations, including but not limited to, the identity of the complainant as well as the date and location of the incident(s) if available;
- (c) A statement affirming the respondent is presumed not responsible for the alleged violation;
- (d) The complainant and the respondent have the right to an advisor of their choice;
- (e) The complainant and respondent have the right to inspect and review the evidence; and
- (f) Information about any code of conduct rules which prohibit the complainant and respondent from knowingly making false statements or submitting false information during the disciplinary process.

(3) The complainant and respondent must receive an amended notice of investigation any time additional charges are added during the course of an investigation. Formal complaints involving more than one complainant or respondent may be consolidated if they arise out of the same facts or circumstances.

(4) The university's investigator shall:

- (a) Provide both the complainant and respondent an equal opportunity to provide witnesses (including fact and expert witnesses) who may be interviewed by the investigator, and other inculpatory and exculpatory evidence;
- (b) Not restrict the ability of either the complainant and respondent to discuss the allegations under investigation or to gather and present relevant evidence;
- (c) Provide the complainant and respondent the same opportunity to be accompanied by an advisor of their choice during meetings relating to the investigation but may limit the participation by the advisor so long as those limits are applied equally;
- (d) Provide both the complainant and respondent equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a complainant, respondent, or other source, so that the complainant and respondent can meaningfully respond to the evidence prior to conclusion of the investigation.

(5) As part of its investigation and disciplinary process, the university cannot access, consider, disclose, or otherwise use a complainant's or respondent's records that are made or maintained

by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the complainant or respondent, unless the university obtains the complainant's or respondent's voluntary, written consent to do so in relation to the investigation and disciplinary process.

(6) The university's investigator generally shall complete the investigation and issue a final investigative report within ninety (90) days of the investigator's appointment. However, the investigator may extend the investigation's time frame where circumstances warrant.

Review of evidence.

(1) Prior to completion of the final investigative report, the investigator must send to the complainant and respondent and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the complainant and respondent. The evidence may be provided in an electronic format or a hard copy. The evidence provided includes evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from the complainant, respondent, or other source, to permit the complainant and respondent to meaningfully respond to the evidence prior to conclusion of the investigation.

(2) The complainant and respondent must have at least ten (10) days to submit a written response to the evidence. The investigator will consider any written responses prior to completion of the final investigative report.

Final Investigative Report. The investigator shall create an investigative report that fairly summarizes relevant evidence and send the report to the complainant and the respondent (and their advisors, if any) for their review and response at least ten (10) days prior to a hearing. The written report shall be delivered simultaneously to the complainant and respondent.

The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing before a hearing examiner or hearing committee. A hearing shall be conducted unless both the complainant and respondent waive, in writing, the right to such a hearing.

Hearing Examiner or Hearing Committee.

(1) The chancellor of each university shall designate a Title IX conduct hearing examiner or hearing committee to hear employee dismissal and discipline cases.

(2) The hearing examiner or hearing committee shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held not later than forty-five (45) days after completion of the final investigative report except that this time limit may be extended by the hearing examiner or hearing committee.

Hearing Process.

(1) A fair hearing for a complainant and respondent under this policy shall include the following rights:

- (a) Service of written notice of a live hearing on the allegations in the formal complaint at least ten (10) days prior to the hearing;**
- (b) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal or other discipline is sought;**
- (c) A right for the complainant and respondent to be heard on their own behalf;**
- (d) A right to an advisor and to offer witnesses. The university may establish restrictions regarding the extent to which the advisor may participate in the hearing, as long as the restrictions apply equally to the complainant and the respondent. The complainant's and respondent's advisors may ask all witnesses relevant questions and follow-up questions, including questions challenging credibility. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. If the complainant or respondent does not have an advisor, the university shall provide the complainant or respondent, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the complainant or respondent. The advisor may be, but is not required to be an attorney;**
- (e) A right to confront and cross-examine adverse witnesses. Cross examination must be conducted directly, orally, and in real time by the complainant's or respondent's advisor. The complainant and the respondent shall not be permitted to personally conduct cross-examination. If the complainant, respondent, or a witness does not submit to cross-examination at the hearing, the hearing examiner or hearing committee must not rely on any statement of the complainant, respondent, or witness in reaching a decision. However, the hearing examiner or hearing committee shall not draw a negative inference in reaching a decision based solely on a complainant's, respondent's, or witness' absence from the hearing or refusal to answer cross-examination or other questions;**
- (f) A verbatim record of all hearings, which might be a sound recording, made available at no cost for inspection and review;**
- (g) Written findings of fact supporting the decision and decision based on the hearing record. The written findings of fact and decision must include: identification of the allegations potentially constituting Title IX misconduct; a description of the procedural steps taken from the receipt of the formal complaint through the decision, including any notifications to the complainant and respondent, interviews with the complainant, respondent, and witnesses, site visits, methods used to gather evidence, and hearings held; conclusions regarding the application of the university's conduct policies to the facts; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction recommended to be imposed, and whether remedies designed to restore or preserve equal access to the university's educational program or activity will be provided to the complainant; and the university's procedures and permissible bases for complainant and the respondent to appeal;**
- (h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats. The hearing examiner or hearing committee shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. Only relevant questions**

may be asked of the complainant, respondent or any witness. The hearing examiner or hearing committee shall determine whether a question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or unless the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent;

- (i) The hearing may be conducted with all participants physically present in the same location, or at the hearing examiner's or hearing committee's discretion, any or all participants may appear at the hearing virtually, with technology enabling the participants simultaneously to see and hear each other. Upon the complainant's or respondent's request, the university shall provide for hearing to occur with the complainant and respondent located in separate rooms with technology enabling all participants to simultaneously see and hear witnesses answering questions.
- (j) The burden of proof to support dismissal, or of grounds to support other discipline, is on the university administration, which shall present witnesses and evidence to meet its burden;
- (k) The standard of proof shall be a preponderance of the evidence;
- (l) No employee or other individual who participated in the investigation of the formal complaint, or who is a material witness, shall be qualified to serve as the hearing examiner or on the hearing committee in that case;
- (m) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration, the complainant, and the respondent;
- (n) Delay or adjournment of the hearing for good cause may be granted by the hearing examiner or hearing committee. Good cause includes the need to investigate evidence as to which a valid claim of surprise is made; to ensure the presence of the complainant or the respondent, their advisors, or a witness; to provide language assistance or accommodation of disabilities; and to accommodate concurrent law enforcement activity.

Hearing Examiner's or Hearing Committee's Findings and Recommendations. The hearing examiner or hearing committee shall simultaneously send to the chancellor's designee, to the complainant, and to the respondent, within thirty (30) days after conclusion of the hearing, or as soon as practicable, a verbatim record of the testimony and a copy of the hearing examiner's or hearing committee's written findings of fact and recommendations.

Chancellor's Designee's Decision.

(1) Within ten (10) days after receipt of the record and findings and recommendations from the hearing examiner or hearing committee, the complainant and respondent may submit written exceptions. The chancellor's designee shall review those materials and their decision shall be based on the record created before the hearing examiner or hearing committee without consideration of any new evidence submitted by the complainant or the respondent. The chancellor's designee shall prepare a written decision within twenty (20) days after the deadline of submission for the written exceptions by the complainant or the respondent. If the chancellor's designee's proposed decision differs substantially from those recommendations, the chancellor's designee shall promptly consult the hearing examiner or hearing

committee and provide the hearing examiner or hearing committee with a reasonable opportunity for a written response prior to making a decision.

(2) The chancellor's designee may adopt the hearing examiner's or hearing committee's findings and recommendations as the chancellor's designee's decision. The chancellor's designee shall explain in the decision any substantial differences from those findings and recommendations.

(3) The chancellor's designee's decision shall be simultaneously sent to the complainant, respondent, and to the hearing examiner or hearing committee within forty-five (45) days of the chancellor's designee's receipt of the hearing examiner's or hearing committee's materials.

Appeal to Chancellor.

The complainant or respondent may appeal the dismissal of a formal Title IX complaint or the chancellor designee's decision by filing a written appeal with the chancellor within twenty (20) days of receiving the decision. The appeal to the chancellor may be made only on the following bases: procedural irregularity that affected the outcome of the matter; new evidence that was not reasonably available at the time of the hearing before the hearing examiner or hearing committee that could affect the outcome of the matter; the Title IX coordinator, investigator(s), chancellor's designee, or the hearing examiner or hearing committee had a conflict of interest or bias for or against the complainant or respondent, or against complainants and respondents generally, that affected the outcome. The complainant and the respondent shall be notified of any appeal to the chancellor.

The chancellor shall permit the complainant and respondent to file a written statement on the appeal. The chancellor shall review the appeal based on the record before the hearing examiner or hearing committee. The complainant and respondent shall be simultaneously provided the final written decision of the chancellor, which shall include the rationale for the decision.

Discretionary review by the Board of Regents.

The chancellor's decision shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by the complainant or the respondent within fourteen (14) days of the final university decision. If the board of regents grants a review upon the record, it will:

(1) Notify the complainant and respondent in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

(2) Issue a written decision describing the result of the review and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent.

Administrative Leave. Pending the final decision on the allegations in the formal complaint, the employee/respondent may be placed on administrative leave.

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