



**BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM  
EXECUTIVE COMMITTEE**

Thursday, September 10, 2020  
3:00 p.m.

To be held by Webex videoconference

AGENDA

1. Calling of the roll
2. Declaration of conflicts
3. Approval of notice of public hearing on emergency rules for Wisconsin Administrative Code Chapters UWS 4, 7, 11, and 17
4. Adjourn

*Webex videoconference registration information and meeting materials may be found at [https://wisconsin.edu/regents/meeting\\_materials](https://wisconsin.edu/regents/meeting_materials).*

**APPROVAL OF NOTICE OF PUBLIC HEARING ON EMERGENCY RULES  
FOR UWS 4, 7, 11, AND 17**

**REQUESTED ACTION**

Adoption of Resolution 3., approving the Notice of Public Hearing on Emergency Rules for UWS 4, 7, 11, and 17.

**Resolution 3.** That, upon recommendation of the President of the University of Wisconsin System, the Board of Regents approves a Notice of Public Hearing on Emergency Rules for UWS 4, 7, 11, and 17.

**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 were required to comply by August 14, 2020.

**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) has modified the University of Wisconsin Board of Regents (Board) administrative rules, Ch. UWS 4, 7, 11, and 17 through the emergency rulemaking process, and is now required under Wis. Stat. 227.24(4) to hold a public hearing on these rules before proceeding with the permanent rulemaking process.

All UW System institutions are affected by the proposed rule revisions. Governor Evers approved the emergency rules on August 7, 2020 and they became effective on August 14, 2020.

The Board has statutory authority for Chapters UWS 4, 7, 11, and 17 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."

### **Previous Action or Discussion**

The Board previously discussed this topic at its August 5, 2020 meeting when it approved the emergency rules for Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code. This discussion occurred after the Board approved scope statements necessary to revise Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code at its July 20, 2020 meeting. That discussion was preceded by the Board approving 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 10475, 10477, and 10478, all of which addressed Dear Colleague Letter updates from the U.S. Department of Education.

### **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) Proposed Notice of Public Hearing on Emergency Rules for UWS 4, 7, 11, and 17
- B) Governor Evers' Approval of Emergency Rules for UWS 4, 7, 11, and 17
- C) Emergency Rule Order for UWS 4, 7, 11, and 17

**NOTICE OF PUBLIC HEARING  
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM**

September 25, 2020  
10:30 a.m. to 11:30 a.m.  
Virtual Meeting hosted on WebEx  
(requires registration)

**Register at:**

<https://wisconsin.webex.com/wisconsin/onstage/g.php?MTID=e5f3beecf4914afc508c4b0345dd98883>

\*After registering, you will receive an email with instructions on how to join the event.

**Or join by telephone at:**

+ 1-415-655-0003  
Access code: 120 625 8713

The Board of Regents of the University of Wisconsin System will hold a public hearing on Chapters UWS 4, UWS 7, UWS 11, and UWS 17, Wis. Admin. Code emergency rules as provided in s. 227.24(4), Wis. Stats. The emergency rules bring the University of Wisconsin System into compliance with the new federal Title IX regulations found at 34 C.F.R Part 106. The federal regulations became effective on August 14, 2020.

**Appearances at the Hearing and Submittal of Written Comments**

UW System personnel or a member of the Board of Regents will preside over the virtual public hearing on behalf of the Board of Regents to provide interested persons with the opportunity to make an oral presentation on the emergency rules. Each individual who registers to speak will be given up to five minutes to give an oral presentation. Persons making oral presentations are requested to also submit their comments in writing.

The Board of Regents will accept written comments until **October 9<sup>th</sup>, 2020**. Comments may be submitted:

- (1) on the web at [www.wisconsin.edu/compliance/public-comment-form/](http://www.wisconsin.edu/compliance/public-comment-form/)
- (2) by email to: [compliance@uwsa.edu](mailto:compliance@uwsa.edu)
- (3) by mail to:

Office of the Board of Regents  
1860 Van Hise Hall  
1220 Linden Drive  
Madison, Wisconsin 53706

To request a paper copy of the Board's Emergency Rule Order, which contains the text of the emergency rules and the plain language analysis, contact the Office of the Board of Regents at the address above or by email at [board@uwsa.edu](mailto:board@uwsa.edu) or phone at (608) 262-2324. The Emergency Rule Order is also available for review at [www.wisconsin.edu/compliance/focus-areas/title-ix/](http://www.wisconsin.edu/compliance/focus-areas/title-ix/) This site includes additional documents associated with this proposed emergency rules promulgation.

**Initial Regulatory Flexibility Analysis**

The proposed emergency rules will not have an effect on small businesses, as defined under s. 227.114(1), Stats.

**Accessibility**

Persons with special needs or circumstances regarding communication or accessibility at the hearing should call Jess Lathrop, Executive Director, Office of the Board of Regents, at (608) 262-2324 prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.



# Tony Evers

Office of the Governor | State of Wisconsin

August 7, 2020

Interim President Tommy Thompson  
University of Wisconsin System  
1700 Van Hise Hall  
1220 Linden Drive  
Madison, Wisconsin 53706

Re: Proposed Administrative Emergency Rules (Chapters UWS 4, 7, 11, and 17)

Dear Interim President Thompson:

As you know, the new federal regulations that impact how universities must respond to allegations of sexual misconduct under Title IX of the Education Amendments of 1972 are scheduled to take effect on August 14, 2020. Many of these proposed changes, which are being implemented under the direction of the U.S. Department of Education Secretary Betsy DeVos, undermine Title IX's mission to address systemic sex-based discrimination in our education system and have prompted educators and civil rights advocates nationwide to voice their concerns over how the changes could affect sexual harassment and assault survivors.

I have been a vocal opponent of these changes. I authorized the Wisconsin Department of Justice to join 17 other states and the District of Columbia in a lawsuit seeking to protect survivors by blocking the new rules. Earlier this summer, I rejected the University of Wisconsin System's original scope statement seeking to implement these regulations out of a concern that it failed to adequately address concerns I had over how survivors would be impacted by the changes.

I also understand the reality that these federal regulations put universities in a bind – either implement the changes or lose federal funding. After years of cuts to the university system implemented under the former administration, and current uncertainties associated with the COVID-19 pandemic, this conundrum is not lost on me.

I am approving the proposed emergency rules in recognition of this reality, but also because of the University of Wisconsin System's commitment to drafting these administrative rules in a manner that strives to protect survivors to the greatest extent possible while complying with the federal regulations. While I remain opposed to the federal changes, I appreciate the University of Wisconsin System's efforts to ensure that students experience equality in their educational pursuits, which necessarily means a commitment to protecting students from sexual misconduct, harassment, and assault.

Sincerely,

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

Tony Evers  
Governor

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

<p><b>IN THE MATTER OF RULEMAKING                  PROCEEDINGS BEFORE THE                  BOARD OF                  REGENTS OF THE UNIVERSITY OF                  WISCONSIN SYSTEM</b></p>	<p>ORDER OF THE BOARD OF                  REGENTS OF THE UNIVERSITY OF                  WISCONSIN SYSTEM                  AMENDING AND ADOPTING                  EMERGENCY RULES</p>
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The statements of scope for this rule, SS [083-20](#), was 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. This emergency rule was approved by the Governor on August 7, 2020.

ORDER

An order of the Board of Regents of the University of Wisconsin System to amend UWS 4.01(1), 4.05(1)(c), 4.07(1) and (2), and 4.09; repeal and recreate 4.015(intro.) and (2) and (5) and (6) and (9) and (10) and (11); and create UWS 4.01(3), 4.015 (3m) and (6m) and (8m), 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, and 4.24, 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.

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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.

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## 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 rule treats 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 rule, 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 rule defines 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 rule allows 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 rule 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 rule contains no definition for “sexual exploitation.” The new rule adds 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 rule mentions 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 rule provides. The new rule will update notice requirements to comply with the new federal regulations.

#### Mandatory Dismissal and Discretionary Dismissal

The current rule states 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 rule incorporates changes to comply with these requirements under the federal regulations.

#### Investigation

Under the current rule, 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 rule allows University of Wisconsin System institutions to hold hearings related to allegations of sexual misconduct, but the rule does 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 rule incorporates 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 rule requires 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 rule will not have an economic impact on small businesses. The new rule applies 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 608-262-2326;  
email address: [jlathrop@uwsa.edu](mailto:jlathrop@uwsa.edu).

**Public Comments:**

The Board of Regents held a public hearing on July 16, 2020 preceded by a public comment period related to the scope statement. The Board of Regents also held a public comment period on the drafts of the proposed rule, which concluded on July 31, 2020. During the comment periods, comments could be submitted to the agency in any of the following ways: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or [adminrules.wisconsin.gov](https://adminrules.wisconsin.gov); (2) by email to [board@uwsa.edu](mailto:board@uwsa.edu); (3) at the public hearing; or (4) by mail to Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin.

The Board of Regents intends to hold a public hearing on the concurrent emergency and permanent rules at a future date and time to be determined.

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TEXT OF RULE

**Section 1. UWS 4.01(1) is amended to read:**

**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 ~~his/her~~ the faculty member's 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.

**Section 2. UWS 4.01(3) is created to read:**

(3) Faculty dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in s. UWS 4.12, shall be governed by ss. UWS 4.11 to UWS 4.24. Sections UWS 4.01 to UWS 4.10 may not apply to faculty dismissal based on Title IX misconduct.

**Section 3. UWS 4.015(intro.), (2), (5), (6), (9), (10), and (11) repealed and recreated to read:**

**UWS 4.015 Definitions. (intro.)** The following terms shall have the meaning given below and shall apply to ss. UWS 4.01 to UWS 4.10:

(2) "Complainant" means any individual who is alleged to be the subject of sexual misconduct, as defined in s. UWS 4.12.

(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.

(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.

Note: See ss. 813.12(1)(am) and 968.075

(9) "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 any of the following legal "reasonable person" standards:

1. The conduct 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. The conduct is so severe, pervasive, or objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in an 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 an offense that meets any of the following definitions found in 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a):

- (a) "Rape" means 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" means 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" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as provided in s. 944.06, Stats.
- (d) "Statutory Rape" means sexual intercourse with a complainant who is under the statutory age of consent as provided in s. 944.06, Stats.

Note: ss. 944.06 and 948.02 Stats.

**(11)** "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.

**Section 4. UWS 4.015(3m) and (6m) and (8m) are created to read:**

**(3m)** "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 and s. UWS 4.12. A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

**(6m)** "Incapacitation" means the state of being unable to physically 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 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.

**(8m)** "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) Engaging in the following conduct without the knowledge and consent of all participants:

1. Observing, recording, or photographing private body parts or sexual activity of the complainant.
2. Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant.
3. Otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant.

(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 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 any 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 the complainant.
2. Other information of a sexual nature involving the complainant, including sexual history or sexual orientation.

**Section 5. UWS 4.05(1)(c) is amended to read:**

(c) A right to be heard in ~~his/her~~ the faculty member's defense.

**Section 6. UWS 4.07(1) and (2) are amended to read:**

**(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 ~~his/her~~ the chancellor's 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.

**Section 7. UWS 4.09 is amended to read:**

**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 ~~his/her~~ the faculty member's position, the faculty member may be relieved immediately of ~~his/her~~ the faculty member's 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.

**Section 8. UWS 4.11 is created to read:**

**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 engaging in, attempting to engage in, or assisting others to engage Title IX misconduct.

(2) Title IX misconduct allegations against faculty shall follow the disciplinary procedure in ss. UWS 4.11 to 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 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.

**Section 9. UWS 4.12 is created to read:**

**UWS 4.12 Definitions.** In this chapter:

(1) "Complainant" means any individual who is alleged to be the subject of sexual 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 and s. UWS 4.015. 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 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.

**(7)** "Formal complaint" means, 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 faculty member and requesting that the university investigate the allegations. At the time of filing of the formal complaint, the complainant shall 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 shall include a physical or digital signature of the complainant or the Title IX Coordinator.

**(8)** "Incapacitation" means the state of being unable to physically 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 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 sexual misconduct, as defined in this section.

**(11)** "Sexual assault" means an offense that meets any of the following definitions found in the 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a);

(a) "Rape" means 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" means 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" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as provided in s. 944.06, Stats.

(d) "Statutory Rape" means sexual intercourse with a complainant who is under the statutory age of consent as provided in 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 any of the following legal "reasonable person" standards:

1. The conduct is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity.

2. The conduct is so severe, pervasive, or objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in an institution's education program or activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment..

(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.

**Section 10. UWS 4.13 is created to read:**

**UWS 4.13 Application of Title IX misconduct disciplinary procedure.** This disciplinary procedures under ss. UWS 4.13 to 4.23 will be used only when all of the following requirements are met:

(1) There is a formal complaint alleging Title IX misconduct.

(2) The conduct occurred in the United States.

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

(4) The complainant shall 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 has submitted a formal complaint.

**Section 11. UWS 4.14 is created to read:**

**UWS 4.14 Dismissal of formal Title IX complaint and related appeal.**

(1) The university shall dismiss a formal complaint consisting of allegations that are any of the following:

- (a) Would not constitute sexual harassment if proved.
- (b) Did not occur in a university program or activity.
- (c) Did not involve actions against someone physically located in the United States.

(2) The university may dismiss a formal complaint when any of the following applies:

- (a) The complainant formally requests in writing to withdraw the formal complaint.
- (b) The faculty member is no longer employed by the university.
- (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 shall 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 may appeal the dismissal by filing a written appeal with the chancellor. The complainant may appeal on any of 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.
- (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 generally, that affected the dismissal decision.

(5) The chancellor shall provide the 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) Dismissal of a Title IX formal complaint does not preclude the university from otherwise pursuing discipline against the faculty member under other administrative rules or university policies.

**Section 12. UWS 4.15 is created to read:**

**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 shall include all of the following:

- (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 the identity of the complainant as well as the date and location of the incident 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.
- (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 shall 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 do all of the following:

- (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 may not 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.

**Section 13. UWS 4.16 is created to read:**

**UWS 4.16 Review of evidence.**

(1) Prior to completion of the final investigative report, the investigator shall 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.

(2) The faculty member and the complainant shall be provided at least 10 days to submit a written response to the evidence. The investigator shall consider any written responses prior to completion of the final investigative report.

**Section 14. UWS 4.17 is created to read:**

**UWS 4.17 Final investigative report.** The investigator shall 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.

**Section 15. UWS 4.18 is created to read:**

**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 conduct 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 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 described in sub. (1) 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.

**Section 16. UWS 4.19 is created to read:**

**UWS 4.19 Adequate due process.**

(1) A fair hearing for a faculty member against whom dismissal or other discipline is sought shall include all of 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 to be heard in the faculty member's defense.

(d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The faculty member'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 does not have an advisor, the university shall provide the faculty member, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the faculty member. The advisor may be an attorney.

(e) A right to confront and cross-examine adverse witnesses. Cross examination shall be conducted directly, orally, and in real time by the faculty member's advisor. The faculty member and the complainant may not personally conduct cross examination. If the faculty member, the complainant, or a witness does not submit to cross-examination at the hearing, the hearing committee or the hearing examiner may 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 may 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 shall include all of the following:

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.
4. The university's procedures and permissible bases for complainant and employee to appeal.

(h) Admissibility of evidence shall be 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) The hearing may be conducted with all participants physically present in the same location, or at the hearing committee's or hearing examiner'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 faculty member's request, the university shall provide for the hearing to occur with 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).

**Section 17. UWS 4.20 is created to read:**

**UWS 4.20 Procedural guarantees.**

(1) Any hearing held shall comply with the requirements set forth in UWS 4.19. The hearing shall observe all of the following requirements:

(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 may 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.

(g) If the Title IX disciplinary process described in ss. UWS 4.11 to 4.24 against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, the faculty member may elect that such process be carried to a final decision. Unless the faculty member so elects in writing, the process shall be discontinued at the expiration of the appointment.

(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.
4. To accommodate concurrent law enforcement activity.

**Section 18. UWS 4.21 is created to read:**

**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.

**Section 19. UWS 4.22 is created to read:**

**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.

**Section 20. UWS 4.23 is created to read:**

**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.

Note: 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 any of 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 live hearing that could affect the outcome of the matter.
  - (c) The Title IX coordinator, investigator, 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.

**Section 21. UWS 4.24 is created to read:**

**UWS 4.24 Suspension from duties.** Pending the final decision on dismissal or other discipline, the faculty member may 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 s. UWS 7.06 in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 7.06 shall apply.

**Section 22. Effective Date. This emergency rule shall take effect upon publication in the official state newspaper.**

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(END OF TEXT OF RULE)

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

<b>IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM</b>	<b>ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING EMERGENCY RULES</b>
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The statements of scope for this rule, SS [084-20](#), was 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. This emergency rule was approved by the Governor on August 7, 2020.

ORDER

An order of the Board of Regents of the University of Wisconsin System to amend UWS 7.01, 7.02(1)(d), 7.03, and 7.05(1)(a) and (1)(b) and (3) and (5)(c) and (6) and (8); and repeal and recreate 7.015(2), 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.

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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.

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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 rule treats 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 rule, 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 rule defines 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 rule allows 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 rule 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 rule contains no definition for “sexual exploitation.” The new rule adds 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 rule mentions 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 rule provides. The new rule will update notice requirements to comply with the new federal regulations.

#### Mandatory Dismissal and Discretionary Dismissal

The current rule states 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 rule incorporates changes to comply with these requirements under the federal regulations.

#### Investigation

Under the current rule, 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 rule allows University of Wisconsin System institutions to hold hearings related to allegations of sexual misconduct, but the rule does 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 rule incorporates 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 rule requires 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 rule 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 608-262-2326;  
email address: [jlathrop@uwsa.edu](mailto:jlathrop@uwsa.edu).

**Public Comments:**

The Board of Regents held a public hearing on July 16, 2020 preceded by a public comment period related to the scope statement. The Board of Regents also held a public comment period on the drafts of the proposed rule, which concluded on July 31, 2020. During the comment periods, comments could be submitted to the agency in any of the following ways: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or [adminrules.wisconsin.gov](https://adminrules.wisconsin.gov); (2) by email to [board@uwsa.edu](mailto:board@uwsa.edu); (3) at the public hearing; or (4) by mail to Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin.

The Board of Regents intends to hold a public hearing on the concurrent emergency and permanent rules at a future date and time to be determined.

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TEXT OF RULE

**Section 1. UWS 7.01 is amended to read:**

**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 ~~his or her~~ duties. Situations involving such serious criminal misconduct by faculty members shall 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.



**Section 2. UWS 7.02(1)(d) is amended to read:**

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

**Section 3. UWS 7.03(1) is amended to read:**

(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.

**Section 4. UWS 7.05(1)(a), (1)(b), (3), (5)(c), (6), and (7) is amended to read:**

(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. If the university knows the identity of an affected party, the university shall make a reasonable attempt to notify the affected party of the report or information at the same time as the faculty member. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the affected party complainant shall be notified by the chancellor of the receipt 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 shall have the disqualification rights that are afforded to the faculty member in this subsection.~~

(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 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 chs. UWS 4 and 6, and implementing institutional policies, shall be followed.

(5)

(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 university knows the identity of an affected party, 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 of 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, as well as for oral argument. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant 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 university knows the identity of an affected party, the board shall make a reasonable attempt to notify the affected party of its decision at the same time as the faculty member.

(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 shall 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.~~

**Section 5. Effective Date. This emergency rule shall take effect upon publication in the official state newspaper.**

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(END OF TEXT OF RULE)  
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STATE OF WISCONSIN  
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

<b>IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM</b>	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 this rule, SS [082-20](#), 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. This emergency rule was approved by the Governor on August 7, 2020.

ORDER

An order of the Board of Regents of the University of Wisconsin System to amend UWS 11.104(1)(a) and (1)(b) and (3) and (5) and (6); repeal and recreate 11.015(intro.) and (2) and (5) and (6) and (9) and (10) and (11); and create UWS 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, and 11.26, 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.

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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.

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## 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 rule treats 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 rule, 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 rule defines 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 rule allows 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 rule 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 rule contains no definition for “sexual exploitation.” The new rule adds 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 rule mentions 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 rule provides. The new rule will update notice requirements to comply with the new federal regulations.

#### Mandatory Dismissal and Discretionary Dismissal

The current rule states 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 rule incorporates changes to comply with these requirements under the federal regulations.

#### Investigation

Under the current rule, 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 rule allows University of Wisconsin System institutions to hold hearings related to allegations of sexual misconduct, but the rule does 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 rule incorporates 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 rule requires 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 rule 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 608-262-2326;  
email address: [jlathrop@uwsa.edu](mailto:jlathrop@uwsa.edu).

**Public Comments:**

The Board of Regents held a public hearing on July 16, 2020 preceded by a public comment period related to the scope statement. The Board of Regents also held a public comment period on the drafts of the proposed rule, which concluded on July 31, 2020. During the comment periods, comments could be submitted to the agency in any of the following ways: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or [adminrules.wisconsin.gov](https://adminrules.wisconsin.gov); (2) by email to [board@uwsa.edu](mailto:board@uwsa.edu); (3) at the public hearing; or (4) by mail to Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin.

The Board of Regents intends to hold a public hearing on the concurrent emergency and permanent rules at a future date and time to be determined.

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TEXT OF RULE

**Section 1. UWS 11.01(4) is created to read:**

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

**Section 2. UWS 11.015 (intro.), (2), (5), (6), (9), (10), and (11) are repealed and recreated to read:**

**UWS 11.015 Definition. (intro.)** The following terms shall have the meaning given below and shall apply to ss. UWS 11.01 to UWS 11.12:

**(2)** “Complainant” means any individual who is alleged to be the subject of sexual misconduct, as defined in s. UWS 11.14.

**(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..

**(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).

**(9)** “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 any of the following legal “reasonable person” standards:

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

2. The conduct is so severe, pervasive, or objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an 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 an offense that meets any of the following definitions found in 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a):



- (a) “Rape” means 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” means 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” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as per s. 944.06, Stats.
- (d) “Statutory Rape” means sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.

**(11)** “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.

**Section 3. UWS 11.015(12) and (13) and (14) are created to read:**

**(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 this section and s. UWS 11.14. 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 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 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) Engaging in the following conduct without the knowledge and consent of all participants:
  1. Observing, recording, or photographing private body parts or sexual activity of the complainant.
  2. Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant.

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 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 any 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 the complainant.
  2. Other information of a sexual nature involving the complainant, including sexual history or sexual orientation.

**Section 4. UWS 11.102(5) is created to read:**

**(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 a faculty member.

**Section 5. UWS 11.104(1)(a), (1)(b), (3), (5), and (6) are amended to read:**

**(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 [11.25](#). If the university knows the identity of an affected party, 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 3 ~~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.~~

(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 11.25](#), 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 ss. [UWS 11.13 to 11.26](#), the chancellor shall file charges and 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 [\(c\)](#) 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.

(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 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 university knows the identify of an affected party, 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 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 shall 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 assault, dating violence, domestic violence, or stalking, in which the evidentiary standard shall be by a preponderance of the evidence.~~

**Section 6. UWS 11.104(3)(d) and (4)(a) and (4)(b) are created to read:**

(d) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.13 to 11.25, the chancellor shall file charges within 2 working days of reaching the decision.

(a) 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.

(b) If charges seeking dismissal are filed under sub. [\(3\) \(c\)](#), the academic staff member shall be afforded a hearing before the institutional standing committee or hearing examiner charged with hearing dismissal cases and making recommendations under s. [UWS 11.23](#). The hearing shall provide the procedural guarantees enumerated under ss. UWS 11.21 to 11.23, 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.

**Section 7. UWS 11.13 is created to read:**

**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 engaging in, attempting to engage in, or assisting others to engage in sexual harassment, sexual assault, stalking, dating violence, and domestic violence as those terms are defined in s. UWS 11.14 (“Title IX misconduct”):

(2) Title IX misconduct allegations against academic staff shall follow the disciplinary procedure in ss. UWS 11.13 to UWS 11.26. An academic staff member may be dismissed only for just cause and may otherwise be disciplined only for adequate cause, and 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 exists. The burden of proof of the existence of just cause for a dismissal 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 of adequate cause for other discipline, is on the university administration.

**Section 8. UWS 11.14 is created to read:**

**UWS 11.14 Definitions.** As used in ss. UWS 11.13 to UWS 11.26, the following terms shall have the meaning given below:

- (1) "Complainant" means any individual who is alleged to be the subject of sexual 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 and s. UWS 11.015. 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 Title IX 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 .

(7) “Formal complaint” means, 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 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 shall include a physical or digital signature of the complainant or the Title IX Coordinator.

(8) “Incapacitation” means the state of being unable to physically 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 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 sexual misconduct as defined in this section.

(11) “Sexual assault” means an offense that meets any of the following definitions found in 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a):

(a) “Rape” means 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” means 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” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as per s. 944.06, Stats.

(d) “Statutory Rape” means sexual intercourse with a complainant who is under the statutory age of consent as per 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 any of the following legal "reasonable person" standards:
  - 1. The conduct is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity.
  - 2. The conduct is so severe, pervasive, or objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in an institution's education program or activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.

(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.

**Section 9. UWS 11.15 is created to read:**

**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.
- (2) The conduct occurred in the United States.
- (3) The conduct occurred within the university's programs or activities as defined in s. UWS 4.12.
- (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 as defined in s. UWS 4.12.

**Section 10. UWS 11.16 is created to read:**

**UWS 11.16 Dismissal of formal Title IX complaint and related appeal.**

- (1) The university shall dismiss formal complaints consisting of allegations that meet any of the following conditions:
  - (a) The conduct would not constitute sexual harassment if proved.
  - (b) The conduct did not occur in a university program or activity.

- (c) The conduct did not involve actions against someone physically located in the United States.
- (2) The university may dismiss formal complaints under any of the following conditions:
- (a) The complainant formally requests in writing to withdraw the formal complaint.
  - (b) The academic staff member is no longer employed by the university.
  - (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, the university shall 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 may appeal the dismissal by filing a written appeal with the chancellor. The complainant may appeal on any of 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.
  - (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 generally, that affected the dismissal decision.
- (5) The chancellor shall simultaneously issue a decision to the complainant and the academic staff member within 20 days of receipt of a written appeal. The chancellor's decision on the appeal of a dismissal shall be final.
- (6) Dismissal of a Title IX Complaint does not preclude the university from otherwise pursuing discipline against the academic staff member under other administrative rules or university policies.

**Section 11. UWS 11.17 is created to read:**

**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 shall include all of the following:
- (a) Information about the grievance process, including informal resolution options.
  - (b) The allegations of Title IX sexual misconduct with sufficient detail for the academic staff member to prepare a response to the allegations, including the



identity of the complainant as well as the date and location of the incident 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.
- (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 shall receive an amended notice of investigation any time additional charges are added during the course of an investigation. Formal Title IX 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 meet all of the following requirements:

- (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 meeting 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) 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.

**Section 12. UWS 11.18 is created to read:**

**UWS 11.18 Review of Evidence.**

(1) Prior to completion of the final investigative report, the investigator shall 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) As part of its investigation and disciplinary process, the university may not 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.

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

**Section 13. UWS 11.19 is created to read:**

**UWS 11.19 Final Investigative Report.** The investigator shall 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.

**Section 14. UWS 11.20 is created to read:**

**UWS 11.20 Standing academic staff committee and hearing examiner.**

(1) The academic staff of each university shall provide a standing committee ("hearing committee") charged with hearing academic staff dismissal and discipline cases. Additionally, the chancellor of each university, in consultation with academic staff representatives, shall adopt policies providing for the designation of a Title IX conduct 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. The academic staff member 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.

**Section 15. UWS 11.21 is created to read:**

**UWS 11.21 Adequate due process.**

(1) A fair hearing for an academic staff member against whom dismissal or other discipline is sought shall include all of 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 to be heard in his or her defense.

(d) A right to an advisor, counsel, or other representatives, and to offer witnesses.

The academic staff member'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 does not have an advisor, the university shall provide the academic staff member, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the academic staff member. The advisor may be an attorney.

(e) A right to confront and cross-examine adverse witnesses. Cross examination shall be conducted directly, orally, and in real time by the academic staff member's advisor. The academic staff member and the complainant may not 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 may 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 may 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 shall include all of the following:

1. Identification of the allegations potentially constituting misconduct as defined in this chapter.

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

(h) Admissibility of evidence shall be 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) The hearing may be conducted with all participants physically present in the same location, or at the hearing committee's or hearing examiner'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 academic staff member's request, the university shall provide for the hearing to occur with 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).

## **Section 16. UWS 11.22 is created to read:**

### **UWS 11.22 Procedural guarantees.**

- (1) Any hearing held shall comply with the requirements set forth in the preceding section. All of the following requirements shall also be observed:
- (a) The burden of proof of the existence of just cause to support dismissal, or of adequate cause to support other discipline, is on the university administration.
  - (b) The standard of proof shall be a preponderance of the evidence.

(c) 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.

(d) The hearing shall be closed unless the academic staff member requests an open hearing; in which case it shall be open as per subch. V of ch. 19, Stats.

(e) 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.

(f) The hearing committee or the hearing examiner may 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).

(g) 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) If the Title IX disciplinary process described in ss. UWS 11.13 to UWS 11.26 against an academic staff member is not concluded before the academic staff member's appointment would expire, the academic staff member may elect that such process be carried to a final decision. Unless the academic staff member so elects in writing, the process shall be discontinued at the expiration of the appointment.

(i) Nothing in this section shall prevent the settlement of cases by mutual agreement between the university administration, the complainant, and the academic staff member.

(j) Delay or adjournment of the hearing for good cause may be granted. Good cause includes any of the following:

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.

4. To accommodate concurrent law enforcement activity.

**Section 17. UWS 11.23 is created to read:**

**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.

**Section 18. UWS 11.24 is created to read:**

**UWS 11.24 Chancellor's decision.**

(1) 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. 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.

(2) The chancellor 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.

**Section 19. UWS 11.25 created to read:**

**UWS 11.25 Appeal to the Board.**

(1) A member of the academic staff who has been dismissed for cause by the chancellor following a hearing may appeal this action to the board. Any appeal shall 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 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 exceptions to the chancellor’s decision, and the board shall conduct its review of the chancellor’s decision, on any of 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 live hearing that could affect the outcome of the matter.
  - (c) 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.

**Section 20. UWS 11.26 is created to read:**

**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 may 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 his or her position immediately, or be assigned to another administrative unit, but 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.

**Section 21. Effective Date. This emergency rule shall take effect upon publication in the official state newspaper.**

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(END OF TEXT OF RULE)  
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STATE OF WISCONSIN  
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

<b>IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM</b>	<b>ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING EMERGENCY RULES</b>
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The statements of scope for this rule, SS [081-20](#), was 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. This emergency rule was approved by the Governor on August 7, 2020.

ORDER

An order of the Board of Regents of the University of Wisconsin System to repeal 17.09(2) and (3) and (17) and (18), and 17.13(3) and (5) and (6); 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 17.02(1) and (2m) and (10) and (11) and (12) and (13m) and (15), 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), and 17.24; and create UWS 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), 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.

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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.

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### 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 rule treats 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 rule, 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 rule defines 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 rule allows 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 rule 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 rule contains no definition for "sexual exploitation." The new rule adds 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 rule mentions 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 rule provides. The new rule will update notice requirements to comply with the new federal regulations.

#### Mandatory Dismissal and Discretionary Dismissal

The current rule states 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 rule incorporates changes to comply with these requirements under the federal regulations.

#### Investigation

Under the current rule, 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 rule allows University of Wisconsin System institutions to hold hearings related to allegations of sexual misconduct, but the rule does 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 rule incorporates 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 rule requires 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 rule 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 608-262-2326;  
email address: [jlathrop@uwsa.edu](mailto:jlathrop@uwsa.edu).

**Public Comments:**

The Board of Regents held a public hearing on July 16, 2020 preceded by a public comment period related to the scope statement. The Board of Regents also held a public comment period on the drafts of the proposed rule, which concluded on July 31, 2020. During the comment periods, comments could be submitted to the agency in any of the following ways: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or [adminrules.wisconsin.gov](https://adminrules.wisconsin.gov); (2) by email to [board@uwsa.edu](mailto:board@uwsa.edu); (3) at the public hearing; or (4) by mail to Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin.

The Board of Regents intends to hold a public hearing on the concurrent emergency and permanent rules at a future date and time to be determined.

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TEXT OF RULE

**Section 1. UWS 17.02(1), (2m), (10), 11, 12, (13m), and (15) are amended to read:**

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

**(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.

**(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.

**(13m)** “Respondent,” for conduct defined in s. UWS 17.09 means any student who is ~~accused of violating any provision of this chapter, 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 s. UWS 17.09 or UWS 17.16.

**(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.

**Section 2. UWS 17.02(2g) and (7m) and (8m) and (9m) and (12m) are created to read:**

**(2g)** “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 conduct 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.

**(7m)** “Education program or activity” includes, for purposes of a Title IX 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.

**(8m)** “Formal complaint” is, 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 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 shall include a physical or digital signature of the complainant or the Title IX Coordinator.

**(9m)** “Incapacitation” means the state of being unable to physically 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 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.

**(12m)** “Party” refers to a respondent or complainant involved in a disciplinary procedure under 17.12 or 17.18.

**Section 3. UWS 17.05 is amended to read:**

**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.~~

**Section 4. UWS 17.06(2) is amended to read:**

**(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).

**Section 5. UWS 17.07(2) is amended to read:**

**(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.

**Section 6. UWS 17.08(1) and (2) is amended to read:**

**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 ~~himself, herself~~ themselves 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.

**Section 7. UWS 17.09(intro.) amended to read:**

**UWS 17.09 Conduct subject to disciplinary action (intro.).** 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 shall use the disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.11 to 17.15. 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 disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.17 to 17.21.

**Section 8. UWS 17.09(2) and (3) and (17) and (18) are repealed.**

**Section 9. UWS 17.09 (4) to (16) are renumbered UWS (2) to (14).**

**Section 10. UWS 17.09(15) is created to read:**

(15) RETALIATION. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in ss. [UWS 17.17](#) to 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 ss. [UWS 17.17](#) to 17.21.

**Section 11. UWS 17.10(1) is amended to read:**

(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 ss. 17.17 to 17.19, are any of the following:

**Section 12. UWS 17.11 is amended to read:**

**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 decide 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.

**Section 13. UWS 17.12(1), (3), and (4) are amended to read:**

**(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.~~

**(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 all of 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).

(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 their designee.

(i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered to the respondent, 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 respondent fails to appear at a scheduled 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 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.

#### **Section 14. UWS 17.13(1) is amended to read:**

**(1)** For conduct defined in s. UWS 17.09, ~~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.~~

**Section 15. UWS 17.13(3), (5), and (6) are repealed.**

**Section 16. UWS 17.14 is amended to read:**

**UWS 17.14 Discretionary appeal to the Board of Regents.** For conduct defined in s. UWS 17.09, 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 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.~~

**Section 17. UWS 17.15 is amended to read:**

**UWS 17.15 Settlement.** For conduct defined in s. UWS 17.09, ~~t~~The 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.~~

**Section 18. UWS 17.16 is renumbered to UWS 17.22.**

**Section 19. UWS 17.16 is created to read:**

**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”), shall 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 any of the following legal “reasonable person” standards:
1. The conduct is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.
  2. The conduct is so severe, pervasive, or objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an institution’s education program or 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.** Attempting, taking, or threatening to take nonconsensual sexual advantage of another person. Examples include, but are not limited to:
- (a) Engaging in any of the following conduct 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.
    - 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 any 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.
  2. Other information of a sexual nature, including sexual history or sexual orientation.

**Section 20. UWS 17.17 is renumbered to UWS 17.23.**

**Section 21. UWS 17.17 is created to read:**

**UWS 17.17 Sexual misconduct disciplinary procedure.**

**(1) PROCESS.**

(a) 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 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

(b) As required by 34 CFR Part 106, a sexual misconduct disciplinary procedure shall also be considered a “Title IX Complaint” when all of the following requirements are met:

1. A “formal complaint,” as defined in 17.02(8m), is either filed by a complainant or signed by the Title IX Coordinator.
2. The alleged conduct 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) to (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.

(c) The university shall dismiss a Title IX Complaint that does not meet all the requirements of s. sub. (1) (a) 1. to 5.

- (d) The university may dismiss a Title IX Complaint if any of the following conditions are met 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 or any allegations therein.
  2. The respondent is no longer enrolled by the university.
  3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the Title IX Complaint or allegations therein.

(e) Upon dismissal of a Title IX Complaint, the university shall promptly send written notice of the dismissal and reason therefore simultaneously to the complainant and respondent.

(f) Dismissal of a Title IX Complaint does not preclude other university action under ch. UWS 17.

(g) 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.

**(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 shall include all of the following:

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

1. The identities of the complainant and respondent involved in the incident, if known.
2. The conduct allegedly constituting sexual misconduct.
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 also involves a Title IX Complaint.

(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 shall meet all of the following requirements:

- (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 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 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, as defined in sub. (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 shall be afforded at least 10 days to submit a written response to the evidence, which the investigator shall consider prior to completion of the final investigative report.

**(5) FINAL INVESTIGATIVE REPORT.** The investigator shall 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 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 shall 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.

**Section 22. UWS 17.18 is renumbered to UWS 17.24.**

**Section 23. UWS 17.18 is created to read:**

**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 all of 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. May 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 those described in s. UWS 17.17(3)(e).

4. 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 shall be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

(a) If a party does not have an advisor at the hearing to conduct cross-examination, the university shall provide someone, without fee or charge, who may or may not be an attorney, to conduct cross-examination.

(b) Before a party or witness answers a cross-examination or other question, the hearing examiner or committee shall first determine whether a question is relevant or not and explain any decision to exclude those questions as not relevant.

(c) The hearing examiner or committee may not 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

(d) At hearings involving a Title IX Complaint, if a party or a witness does not submit to cross-examination at the hearing, then the hearing examiner or committee may 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)(d).

**(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 shall include all of the following:

(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 this chapter to the facts.

(e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility under this chapter and any Title IX Complaint, 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.

**Section 24. UWS 17.19 is renumbered to UWS 17.25.**

**Section 25. UWS 17.19 is created to read:**

**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.

(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.
- (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 shall 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.

**Section 26. UWS 17.20 is created to read:**

**UWS 17.20 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, after written notice has been 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 in the disciplinary procedure, the agreement and its terms shall be in writing and 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 ss. UWS 17.17 to 17.21.

**Section 27. UWS 17.21 is created to read:**

**UWS 17.21 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 shall do all of the following:

**(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.

**Section 28. UWS 17.22 is amended to read:**

**UWS 17.22 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.

**Section 29. UWS 17.23(2), (3), and (5) are amended to read:**

(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 17.24 17.18.

(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 17.24.

(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.

**Section 30. UWS 17.24 are amended to read:**

**UWS 17.24 Petition for restoration of rights after suspension or expulsion.** A respondent who has been suspended may petition to have their student status, rights, and privileges restored before the suspension has expired by its own terms under s. UWS ~~17.17(2)~~ 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. The chief administrative officer shall make the readmission decision. In cases of sexual misconduct, the readmission decision should be made in consultation with the Title IX Coordinator and the complainant should be notified of any change to the disciplinary outcome, and shall be provided opportunity to respond regarding any review of responsibility findings.

**Section 31. UWS 17.25(2)(d) is created to read:**

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

**Section 32. Effective Date. This emergency rule shall take effect upon publication in the official state newspaper.**

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(END OF TEXT OF RULE)  
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