

12/02/2020



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

December 10, 2020
Via WebEx Videoconferences

Thursday, December 10, 2020

- | | |
|-------------------------|--|
| 8:45 a.m. – 10:15 a.m. | Business & Finance Committee
Via WebEx Videoconference |
| 8:45 a.m. – 10:15 a.m. | Education Committee
Via WebEx Videoconference |
| 10:45 a.m. – 12:00 p.m. | Audit Committee
Via WebEx Videoconference |
| 10:45 a.m. – 12:00 p.m. | Capital Planning & Budget Committee
Via WebEx Videoconference |
| 10:45 a.m. – 12:00 p.m. | Research, Economic Development, & Innovation Committee
Via WebEx Videoconference |
| 12:00 p.m. | Lunch Break |
| 12:30 p.m. | I. All Regents
Via WebEx Videoconference |
| | Closed Session
Via WebEx Videoconference |

Webex videoconference registration information and meeting materials can be found at <https://www.wisconsin.edu/regents/meetingmaterials> or may be obtained from Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, WI 53706, (608) 262-2324.

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

I. All Regents

Via WebEx Videoconference

Thursday, December 10, 2020

12:30 p.m.

1. Calling of the Roll
2. Declaration of Conflicts
3. Updates and Introductions
4. Approval of the record of the November 5, 2020 Meeting of the UW System Board of Regents
5. Report of the Board President
 - A. Report of the Wisconsin Technical College System Board
 - B. Update on the UW-River Falls chancellor search process
 - C. Winter commencements
6. Report of the System President
 - A. COVID-19 update
 - B. Prison Education Initiative
 - C. 2021-23 pay plan request
7. Approval of the UW System's 2021-23 pay plan request
8. UW System Prison Education Initiative
9. Approval of Extension of Authority to Temporarily Waive Provisions of Regent Policy Documents
10. Report and approval of actions taken by the Capital Planning & Budget Committee
11. Report of the Research, Economic Development, and Innovation Committee
12. Report and approval of actions taken by the Audit Committee
13. Report and approval of actions taken by the Business & Finance Committee
14. Report and approval of actions taken by the Education Committee

15. Approval of changes to Regent Policy Document 2-2, "Statement of Expectations of Board Members"
16. Approval of changes to the Board of Regents 2021 meeting schedule
17. Approval of Revised Permanent Rule Language and Final Rule Orders for Chapters UWS 4, 7, 11, and 17, Wis. Admin. Code, "Procedures for Dismissal," "Dismissal of Faculty in Special Cases," "Dismissal of Academic Staff for Cause," and "Nonacademic Student Misconduct"
18. Regent communications, petitions, and memorials
19. Closed Session – Move into closed session to:
 - A. consider compensation and implementation of the 2019-21 legislatively approved state pay plan adjustments for individuals with salaries that exceed 75% of the UW System President's salary, as permitted by s. 19.85(1)(c), Wis. Stats.;
 - B. consider compensation adjustments and implementation of the 2019-21 legislatively approved state pay plan adjustments for chancellors, as permitted by s. 19.85(1)(c), Wis. Stats.;
 - C. consider emeritus status for the UW-Stevens Point Chancellor, as permitted by s. 19.85(1)(f), Wis. Stats.;
 - D. consider personnel evaluations of chancellors, as permitted by s. 19.85(1)(c), Wis. Stats.; and
 - E. confer with legal counsel regarding potential litigation in which the Board is likely to become involved, as permitted by s. 19.85(1)(g), Wis. Stats.
20. Adjourn

**2021-23 PAY PLAN RECOMMENDATION FOR
UNIVERSITY OF WISCONSIN SYSTEM EMPLOYEES**

REQUESTED ACTION

Approval of Resolution 7.

Resolution 7. That, upon the recommendation of the President of University of Wisconsin System and the Chancellor of the University of Wisconsin-Madison, the Board of Regents approves a pay plan request, on behalf of all UW System employees, of: a 2% increase in fiscal year 2021-22 and a 2.5% increase in fiscal year 2022-23, fully funded from the State's Compensation Reserve; and continued eligibility for retirement, health insurance, and supplemental sick leave conversion benefits for UW System employees, that are no less than benefits provided to other state employees through the state's compensation plan.

SUMMARY

UW System faculty and staff are considered among the best in the world, and institutions compete nationally and internationally to attract and retain the most talented individuals. Other public universities have been steadily increasing compensation at the rate of inflation or better annually, averaging a 2% increase each year. These gradual increases have led to a gap between pay for UW System employees and those of other universities. UW System employees are integral to the success of the UW institutions. A pay plan increase will help maintain the quality education that students and families expect and deserve.

The following chart illustrates recent compensation percentage increases for UW System employees as compared to data reported by the Higher Education Price Index (HEPI), an inflation index designed specifically for use by institutions of higher education, and by the College & University Professional Association for Human Resources (CUPA-HR).

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Approved Pay Plan for UW Employees	1%	0%	0%	0%	2% + 2%	2%
Higher Education Price Index (HEPI)	1.58%	2.68%	2.65%	3%	2.83%	2.23%
Average Percent Increase for Higher Ed Institutions	2.23%	2%	2.2%	1.98%*	2.11%*	2.43%*
*Note: data for these years includes both public and private institutions, versus prior years where only public institutions were reported.						

The Chancellors and Provosts continue to share information on the challenges they are facing in their efforts to recruit and retain the high-quality faculty and staff they need to accomplish their missions. In prior years, some institutions have been able to internally reallocate base dollars to address certain compensation issues as permitted by Wis. Stat. § 36.09(1)(j). Detailed information about turnover of UW faculty and reallocated base adjustments is provided to the Board in a separate report that will also be discussed with the Business and Finance Committee.

Under Wis. Stat. § 36.09(1), the Board of Regents is vested with primary responsibility for the governance of the University of Wisconsin System. It is the Board's policy to promote the attraction, development, and retention of a diverse and highly qualified workforce that will effectively and efficiently pursue the missions of the UW System and each UW institution.

For the 2021-23 biennium, the President of the UW System and the Chancellor of UW-Madison are recommending the following:

1. Implement a 2% increase for fiscal year 2021-22 and a 2.5% increase for fiscal year 2022-23 of the 2021-23 biennium, to be effective the dates authorized by the State of Wisconsin, and fully funded through the state's Compensation Reserve using general purpose revenue (GPR) for state-funded employees; and,
2. As State of Wisconsin employees, UW System employees continue their eligibility for retirement, health insurance, and supplemental sick leave conversion benefits that are no less than those benefits provided to all other state employees through the state's compensation plan.

While this pay plan request will not close the salary gaps between UW System employees and those at peer institutions, it will provide modest salary increases and provide Chancellors with the ability to recognize the contributions of UW faculty and staff.

Data available for comparing salaries of UW System faculty to their peers is illustrated in Attachment A. Information from UW-Madison documenting the rationale for the 2021-23 pay plan recommendation is included as Attachment B.

Presenter

- UW System President Tommy Thompson

BACKGROUND

Prior to July 1, 2015, the Board of Regents was responsible for recommending pay plan adjustments for faculty, academic staff, and limited appointees. With the Legislature's approval of the two personnel systems authorized by Wis. Stat. § 36.115, effective July 1, 2015, the UW System Board of Regents and the UW-Madison Chancellor are responsible for recommending a pay plan for all members of the UW System workforce – faculty, academic staff, university staff, and limited appointees. The pay plan recommendations requested by the Board of Regents, UW System President, and the UW-Madison Chancellor must ultimately be approved by the Legislature's Joint Committee on Employee Relations (JCOER). Per Wis. Stat. § 230.12(3)(e), the Board's pay plan recommendations are submitted to the state's Administrator of the Division of Personnel Management (DPM) who will submit a proposal to JCOER for adjusting compensation and employee benefits for University of Wisconsin System employees. As outlined in Wis. Stat. § 230.12(3)(e), the proposal shall be based upon:

...the competitive ability of the board of regents to recruit and retain qualified faculty and academic staff, data collected as to rates of pay for comparable work in other public services, universities and commercial and industrial establishments, recommendations of the board of regents and any special studies carried on as to the need for any changes in compensation and employee benefits to cover each year of the biennium. The proposal shall also take proper account of prevailing pay rates, costs and standards of living and the state's employment policies. The proposal for such pay adjustments may contain recommendations for across-the-board pay adjustments, merit or other adjustments and employee benefit improvements.

Related Policies

- Wis. Stat. Chapter 36
- Wis. Stat. Chapter 230
- Regent Policy Document 20-21, University Personnel Systems

ATTACHMENTS

- A) Faculty Salaries Behind Peers Comparison
- B) UW-Madison 2021-23 Pay Plan Recommendation

Table 1
Faculty Percentage behind Peers Using Actual Salary Data
(After 2017-18 salary adjustments)

UW Institution	Actual 2014-15	Actual 2015-16	Actual 2016-17	Actual 2017-18
Madison	8.44%	9.49%	9.57%	8.49%
Milwaukee	11.39%	13.85%	16.27%	17.15%
Comprehensives	16.19%	16.50%	17.47%	16.26%
Colleges	8.44%	9.49%	9.57%	8.49%
Extension	10.43%	11.25%	11.29%	11.40%
Totals	11.64%	12.57%	13.21%	12.32%

Table 2
Faculty Percentage Behind Peers: Adjusted for Cost of Living Using Economic Research Institute Index

UW Institution	2014-2015		2016-17		2017-18	
	<u>Unadjusted</u>	<u>Adjusted</u>	<u>Unadjusted</u>	<u>Adjusted</u>	<u>Unadjusted</u>	<u>Adjusted</u>
Madison	8.44%	18.32%	9.57%	19.15%	8.49%	15.60%
Milwaukee	11.39%	10.20%	16.27%	12.67%	17.15%	10.82%
Comprehensives	16.19%	20.84%	17.47%	22.65%	16.26%	18.99%
Colleges	8.44%	18.32%	9.57%	19.15%	8.49%	15.60%
Extension	10.43%	27.88%	11.29%	27.73%	11.40%	22.91%
Totals	11.64%	18.53%	13.21%	19.91%	12.32%	16.48%

UNIVERSITY OF WISCONSIN - MADISON 2021-23 PAY PLAN RECOMMENDATION

The Board of Regents and the UW-Madison Chancellor are responsible for recommending a pay plan for all members of the UW System workforce – faculty, academic staff, university staff, and limited appointees. Per [Wis. Stat. § 230.12\(3\)\(e\)](#), the Board and UW-Madison must submit pay plan recommendations to the Administrator of the Division of Personnel Management (DPM) who will submit to the Joint Committee on Employee Relations (JCOER) a proposal for adjusting compensation for University of Wisconsin employees.

UW-Madison Pay Plan Recommendation

For the 2021-23 biennium, UW-Madison is **recommending a 2% increase for the first year (FY22) and 2.5% increase for the second year (FY23)** funded by the state compensation reserve using general purpose revenue. Given that tuition rates are expected to be frozen through the biennium for the bulk of our student body, and the approximate \$320 million negative impact the COVID pandemic has caused on our budget from March 2020 to June 2021 alone, we respectfully request that the state funds the full cost of this increase for employees supported on state general purpose revenues and tuition.

This recommendation also requests state funding for retirement, health insurance, and supplemental sick leave conversion benefits at a level no less than those provided to all other state employees through the state's compensation plan.

Rationale for Recommendation

Providing general wage increases for UW-Madison faculty and staff is critical in the 2021-23 biennium. The following key points, like the 2019-21 biennium pay plan recommendations, provide context and justification for this recommendation.

- **Lagging compensation compared to peers** – Faculty salary comparisons continue to show UW-Madison lagging its peers in the Big 10 and across the country. For example, salaries for full professors at UW-Madison are 7.1% below the median for its peer group (see Appendix A). Faculty are the essence of what allows UW-Madison to achieve its goals in teaching, research and outreach.
- **Historical lack of general wage increases** – Despite recent years of both pay plan increases and concerted market adjustments, overall general compensation increases in the past decade (2010-2020) for UW-Madison faculty and staff contrast with higher increases among our peers. Our Official Salary Peer institutions provided an average of approximately 3.09% increases for faculty and 2.24% increases for staff, while Big Ten institutions provided an average of approximately 2.47% increases for faculty and 2.20% increases for staff (see Appendix B); these are notably higher than the average 1.69% increase for faculty and 1.09% increase for staff at UW-Madison. Over the years, this difference has created substantial pay gaps between our university and our peers, which in turn creates retention issues at UW-Madison. Unfortunately, due to these gaps, UW-Madison continues to be the target for outside institutions trying to recruit our talented faculty and staff. Lagging salaries can have a real impact on our progress towards our

mission to support the state with a world-class university positioned to drive meaningful advancements in research, teaching, and workforce/economic development.

- **Increased benefit costs for employees** – University employee benefit contributions have risen substantially since 2011 Wisconsin Act 10. Currently, 2020 employee contribution rates towards the Wisconsin Retirement System (WRS) are 6.75% of annual salary. Before 2011, the state picked up the entire WRS employee contribution. Lagging base salary levels (described earlier) have compounded this issue and has resulted in many campus employees experiencing decreased real purchasing power compared to 2010.
- **Labor market challenges** – Although Madison's unemployment rate sharply increased in April 2020 due to the COVID-19 pandemic, the rate is declining as businesses learn to operate in the new environment. With the rehiring of employees, local wages are rising (0.4% in Q3 2020) along with the cost of living in Madison (currently 7% higher than national average). UW-Madison has many positions where the local labor market is relevant for recruitment and retention of staff. If existing wages for employees are not keeping up with the local market, it becomes increasingly difficult to attract and retain employees to enable us to deliver on our public mission.
- **Consistency with National and Peer Market Practices**- As a highly ranked university with employees in jobs that span multiple industries, we must look to see what external organizations and those in our peer market are anticipating for 2021. The *2020-2021 U.S. World at Work Salary Budget Survey* indicates that nationally (including within Wisconsin) external organizations are still budgeting a median of 3.0% for merit increases. When focusing on just public administration, the figure drops to 2.5%. However, in Willis Towers Watson's *2020 U.S. General Industry Middle Management, Professional and Support Compensation Survey Results and Trends* webinar, the overall, average 2021 salary increase projection across all employee types was a resounding 3.0%.

Approval of this request will prevent UW-Madison's faculty and staff from falling further behind its external competitors, which will allow the university to retain the talent it needs to drive the advancement of its public mission.

Appendix A

2019-20 Average Faculty Salaries by Professorial Rank
UW-Madison's Official Faculty Salary Peer Group

University	Full Professor		Associate Professor		Assistant Professor		Percent Change from 2018-19		
	Average Salary	Rank	Average Salary	Rank	Average Salary	Rank	Full Prof	Assoc Prof	Assist Prof
University of California-Los Angeles	\$225,000	1	\$148,900	1	\$111,100	2	5.1%	4.8%	2.3%
University of California-Berkeley	\$213,100	2	\$142,800	2	\$118,200	1	5.6%	3.7%	2.5%
The University of Texas at Austin	\$183,800	3	\$119,300	3	\$109,100	3	4.6%	3.6%	5.3%
The University of Michigan-Ann Arbor	\$178,500	4	\$118,500	5	\$100,800	7	2.0%	2.4%	2.3%
Michigan State University	\$160,900	5	\$105,200	10	\$84,300	12	2.2%	2.0%	1.5%
University of Illinois at Urbana-Champaign	\$159,500	6	\$109,500	7	\$101,600	6	2.2%	2.7%	3.8%
University of Washington	\$156,400	7	\$119,300	4	\$107,500	4	3.3%	4.1%	4.8%
The Ohio State University	\$154,700	8	\$106,100	9	\$96,200	9	1.6%	2.5%	4.2%
Purdue University	\$149,200	9	\$107,500	8	\$93,200	11	2.1%	3.2%	1.4%
University of Wisconsin-Madison	\$148,900	10	\$112,500	6	\$97,100	8	4.4%	5.9%	4.5%
University of Minnesota-Twin Cities	\$148,400	11	\$105,000	11	\$93,600	10	1.8%	2.0%	2.9%
Indiana University-Bloomington	\$143,500	12	\$102,000	12	\$105,500	5	1.0%	3.8%	0.9%
Peer Group Median (w/o UW-Madison)	\$159,500		\$109,500		\$101,600				
Percent Increase Needed to Reach Median	7.1%		-2.7%		4.6%				

Notes: Based on the annual AAUP Faculty Salary Survey. Faculty on 12-month appointments are included, but their salaries have been converted to 9-month rates. Medical schools are excluded. UW-Madison's peer group for purposes of salary comparisons was established by The Governor's Commission on Faculty Compensation in 1984. The peer universities include the University of California-Berkeley, University of California-Los Angeles, University of Michigan, Ohio State University, University of Texas-Austin, University of Illinois, Purdue University, Indiana University, University of Minnesota, Michigan State University, and the University of Washington-Seattle. Salaries reported to AAUP are affected by several factors, including faculty turnover and promotions, salary adjustments for promotions, competitive market adjustments, and equity adjustments, in addition to any announced annual increases.

Appendix B

Historical Compensation Increases - UW-Madison Official Salary Peers

	Ten-Year Average		2019-20		2018-19		2017-18		2016-17		2015-16		2014-15		2013-14		2012-13		2011-12		2010-11	
	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff
UW-Madison	1.69%	1.09%	6.13%	2.38%	3.10%	3.10%	1.40%	0.50%	1.40%	0.50%	0.80%	0.10%	1.00%	1.00%	1.30%	1.30%	2.00%	2.00%	0.00%	0.00%	0.00%	0.00%
Average (excluding UW-Madison)	3.09%	2.24%	3.72%	2.72%	3.48%	2.56%	3.25%	2.41%	3.14%	2.24%	3.12%	2.40%	3.21%	2.36%	2.96%	2.32%	2.62%	1.93%	2.88%	2.03%	2.50%	1.47%

Official salary peers include: University of California-Berkeley, University of California-Los Angeles, University of Michigan, Ohio State University, University of Texas-Austin, University of Illinois-Urbana, Purdue University, Indiana University, University of Minnesota, Michigan State University, and University of Washington-Seattle.

Historical Compensation Increases - Big10 Public Institutions

	Ten-Year Average		2019-20		2018-19		2017-18		2016-17		2015-16		2014-15		2013-14		2012-13		2011-12		2010-11	
	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff	Faculty	Staff
UW-Madison	1.69%	1.09%	6.13%	2.38%	3.10%	3.10%	1.40%	0.50%	1.40%	0.50%	0.80%	0.10%	1.00%	1.00%	1.30%	1.30%	2.00%	2.00%	0.00%	0.00%	0.00%	0.00%
Average (excluding UW-Madison)	2.47%	2.20%	2.85%	2.60%	2.44%	2.29%	2.21%	1.92%	2.20%	1.91%	2.37%	2.33%	2.66%	2.14%	3.00%	2.59%	2.92%	2.74%	2.11%	1.81%	1.90%	1.63%

Big10 Public Universities include: University of Illinois-Urbana, Indiana University, University of Iowa, University of Michigan, Michigan State University, University of Minnesota, University of Nebraska-Lincoln, Ohio State University, Pennsylvania State University, Purdue University, University of Maryland, and Rutgers University

Source: Major public research universities.

Note: Not all institutions shared information in each year during this ten-year period.

Academic Planning and Institutional Research, Office of the Provost, ari, November 2020

**UW SYSTEM PRISON EDUCATION INITIATIVE:
RENEWING THE PROMISE OF THE WISCONSIN IDEA**

REQUESTED ACTION

None

SUMMARY

Tommy G. Thompson, UW System President and Dr. Anny Morrobel-Sosa, UW System Vice President for Academic and Student Affairs, will provide a presentation describing the UW System Prison Education Initiative, as well as an initial plan for implementation.

Presenters

Tommy G. Thompson, UW System President

Anny Morrobel-Sosa, UW System Vice President for Academic and Student Affairs

BACKGROUND

"To make positive and lasting change in someone's life, you must take the time to understand who they are, where they came from and how they got to where they are today. Our state's prison population deserve such consideration, we must accept the challenge of replacing contemptuous stereotypes seemingly void of hope. Their future does not need to be hopeless, if our politicians, business leaders and experts in the criminal justice system come together to create hope-inspiring educational opportunities which increase the chances for success."

—Tommy G. Thompson

"I shall never be content until the beneficent influence of the University reaches every family of the state."

—Charles Van Hise, 1903

"The Wisconsin tradition meant more than a simple belief in the people. It also meant a faith in the application of intelligence and reason to the problems of society. It meant a deep conviction that the role of government was not to stumble along like a drunkard in the dark, but to light its way by the best torches of knowledge and understanding it could find."

—Adlai E. Stevenson II, 1952

The Wisconsin Idea. The mission of the University of Wisconsin is to develop human resources, to discover and disseminate knowledge, and to extend knowledge in service to the public good beyond the boundaries of our campuses. The Wisconsin Idea is manifest in our mission, and serves as a promise to the people of Wisconsin.

Because of the Wisconsin Idea, and for more than 170 years, the University of Wisconsin has been dedicated to expanding and enhancing the opportunities and aspirations of the people of Wisconsin. Many thousands of lives have been improved as a result of these efforts.

Today, our challenge is to fulfill the promise of the Wisconsin Idea by expanding and enhancing 21st century opportunities for Wisconsinites.

The Challenge. Wisconsin has a problem in our prisons. They are crowded, expensive, racially disparate, and not rehabilitative. We have 20,000 adults currently in prison, a far greater share of the population compared with neighboring states, and many of our prisons are at capacity. In 2019, Wisconsin had approximately seven times the number of Black and Native American prisoners relative to their respective shares of the overall state population.¹ It costs between \$35,000-45,000 per year² to house an adult prisoner. Those leaving prison are often unprepared for employment, further education, or other opportunities despite employers having unmet needs or available talent.³ Even those with prior education and training may find the fields in which they had worked or studied are not available to those with a criminal record. College is often financially unaffordable, as a criminal conviction is also a disqualification from a Pell Grant. Currently 37% of those

¹<https://doc.wi.gov/DataResearch/DataAndReports/2019%20PIOC%20Profile.pdf>
<https://www.census.gov/quickfacts/WI>

² <http://www.wisconsinbudgetproject.org/prison-price-tag-the-high-cost-of-wisconsins-corrections-policies>

³ https://www.wmc.org/wp-content/uploads/Future-WI-Report_FINAL.pdf

released from prison will return within ten years (half of those within their first year after release), yet for 80% it is not because of having committed a new crime.⁴

While we understand past beliefs about being “tough on crime,” the Wisconsin Idea tells us we have an obligation to help solve problems in society, offer innovative solutions, and serve and extend knowledge to everyone in Wisconsin – regardless of past behavior or current demographics.

The Opportunity. Our prisons have challenges, but they are also full of potential. Nearly 70% of prisoners have a high school degree or equivalent, 1 in 4 have some post-secondary education and many have college-level literacy skills, and 1,400 are veterans who may be eligible for G.I. benefits.

We know that prison education works. Programs nationally show increased educational and employment opportunities for participants and reduced reincarceration, cost savings to states (with a \$4-5 return for every \$1 invested), and improved behaviors and climate in prisons. In Wisconsin, our technical colleges have been offering courses and associate degree programs. Our own Odyssey Beyond Bars program at UW-Madison has already shown the impact of offering college courses to prisoners, and has developed relationships with prisons and the necessary wraparound service providers. But we can and need to do more.

The UW System is uniquely positioned to develop and deliver a Prison Education Initiative. We will bring key stakeholders to address these challenges and create new opportunities for those in prison and to benefit the entire State of Wisconsin. We will partner with the Wisconsin Department of Corrections, Wisconsin Technical College System, subject matter experts from UW-Madison, and Extended Campus.

Together, we will develop and deliver a pilot program to offer a bachelor’s degree program at three of our campuses to adults in nearby prisons focused on fields that meet student interests and employer needs. We will scale this program to eventually transform our prisons into colleges and offer college access to every prisoner who desires it. We will increase UW System enrollment, and help reduce Wisconsin’s racial disparities in education, income, and incarceration. As a complement to our online learning initiatives, we will help prepare Wisconsin’s future workforce.

Key Stakeholders

- Wisconsin Technical College System
- State of Wisconsin Department of Corrections
- State of Wisconsin Department of Workforce Development

⁴ <https://doc.wi.gov/DataResearch/InteractiveDashboards/ReincarcerationRates.pdf>

- State of Wisconsin Department of Safety and Professional Licensing
- Wisconsin Manufacturers & Commerce
- UW-Madison, Odyssey Beyond Bars Program

Strategy and Implementation Team

- Anny Morrobel-Sosa, Ph.D., UW System Vice President for Academic and Student Affairs
- Peter S. Moreno, J.D., M.S., UW-Madison, Director of Odyssey Beyond Bars, UW-Madison
- Stephen Hurley, J.D., UW-Madison Law School Adjunct Professor and Attorney
- Laura Dunek, J.D., Ph.D., UW System Senior Special Assistant for Governance and Strategic Initiatives
- Brian Nemoir, UW System Special Assistant
- Aaron Seligman, J.D., M.A.T., UW System Special Assistant

Related Policies

- Regent Policy 4-12: Academic Program Planning, Review, and Approval in the University of Wisconsin System.
- UW System Administrative Policy 102: Policy on University of Wisconsin System Array Management: Program Planning, Delivery, Review, and Reporting.

**EXTENSION OF AUTHORITY TO TEMPORARILY WAIVE PROVISIONS
OF REGENT POLICY DOCUMENTS**

REQUESTED ACTION

Adoption of Resolution 9., extending the delegation of authority to the UW System President to temporarily suspend the provisions of Regent Policy Documents, through May 31, 2021.

Resolution 9. That, upon the recommendation of the President of the UW System, the Board of Regents extends the delegation of authority to the UW System President to temporarily suspend the provisions of Regent Policy Documents if the UW System President determines that any provisions of the Regent Policy Documents would prevent, hinder, or delay necessary actions to respond to the public health emergency or the abnormal economic disruption resulting from the COVID-19 pandemic, effective March 19, 2020, through May 31, 2021 unless so authorized or extended by the Board of Regents.

SUMMARY

On April 2, 2020, the Board of Regents adopted Resolution 11419, delegating authority to the UW System President to temporarily suspend the provisions of Regent Policy Documents and to request suspension of the provisions of any administrative rules that would prevent, hinder, or delay necessary actions to respond to the public health emergency or the abnormal economic disruption resulting from the COVID-19 pandemic.

On June 4, 2020, the Board of Regents adopted Resolution 11454, which extended the delegated authority until December 31, 2020. The Board is being asked to extend the delegation of authority to temporarily suspend provisions of Regent Policy Documents through May 31, 2021 for the UW System to expediently meet the continued emergent needs of the COVID-19 pandemic.

Presenter

Quinn Williams, UW System General Counsel

BACKGROUND

The authority to grant waivers to Board of Regents Policy was delegated to the President of the UW System in order to allow for prompt response to the rapidly evolving situation. This delegation of authority has been granted to the President and is not sub-delegable.

Examples of waivers to date have include relaxed restrictions on use or transfer of certain auxiliary funds, authorization for the President to enter into certain contracts and leases of real property related to the pandemic, and removal of the ACT/SAT score requirements for freshman applicants to UW institutions. The ACT/SAT interim RPD waivers were later amended by the Board through resolutions 11430 and 11465.

These waivers are of limited duration to allow for appropriate response to COVID-19. Chancellors or their designees will submit requests for waivers directly to the President with copies to the General Counsel and the Executive Director and Board Secretary. Each request shall include the nature of the request, a brief reason for the request, the specific provision of Regent Policy and the outcome or impact of the waiver if granted, such as the amount of funds transferred or contracts to be signed. The President will review the waiver request in coordination with the appropriate UW System Vice President and / or UW System Administration staff prior to issuing a determination of whether to approve the request. Requests will be tracked and, if approved, posted to a public facing website by the UW System Offices of Compliance and Integrity and Administrative Policies and Special Projects.

Previous Action or Discussion

Resolution 11419, adopted April 2, 2020.

Resolution 11454, adopted June 4, 2020.

**APPROVAL TO AMEND REGENT POLICY DOCUMENT 2-2,
“STATEMENT OF EXPECTATIONS FOR BOARD MEMBERS”**

REQUESTED ACTION

Adoption of Resolution 15, which amends RPD 2-2, “Statement of Expectations for Board Members” to reformat the policy to meet the standards of RPD 2-3, “Standards and Protocol for Regent Policy Documents.”

Resolution 15. That, the UW System Board of Regents amends Regent Policy Document 2-2, “Statement of Expectations for Board Members,” to meet the standards of Regent Policy Document 2-3, “Standards and Protocol for Regent Policy Documents.”

SUMMARY

RPD 2-2, “Statement of Expectations for Board Members,” establishes expectations for those who serve on the UW System Board of Regents. This proposal retains the provisions of the original policy but amends the policy to meet the standards for a Regent Policy Document.

The Board is asked to consider this policy revision as part of an ongoing review and analysis of all Regent Policy Documents. In February 2011, the President of the Board formally announced a process to review and update the Board’s RPDs. Each RPD is reviewed to determine whether the policy is still relevant and whether the policy should be revised or removed. Policies that are retained are formatted to meet standards established by the Regents in RPD 2-3. The Board has revised numerous policies, repealed obsolete policies, and established new policies under this process.

Presenter

- Andrew S. Petersen, Regent President

BACKGROUND

In 1993, the UW System Board of Regents established a committee to review issues related to Board orientation and development. Minutes from July 16, 1993 Board of Regents meeting state that the committee “recognized the importance to new Regents—and particularly to potential Regent nominees—of knowing what is expected of them as members of the Board of Regents.” The committee developed a statement of expectations to meet this need.

The statement of expectations, codified as Regent Policy Document 2-2, requires Board members to actively contribute to the work of the Board, to adhere to high standards of ethical conduct, and to comply with laws relating to public officials and boards. Board members are expected to effectively and efficiently govern the UW System in the public interest.

This statement of expectations remains relevant today, and this proposal makes few changes to the content of the policy. The primary purpose of this proposed revision is to meet formatting standards for Regent Policy Documents as outlined in RPD 2-3, “Standards and Protocol for Regent Policy Documents.” The proposed policy also adds cross-references to RPD 2-4, “Ethics and Conflict of Interest Policy for the UW System Board of Regents,” which the Board adopted in February 2018. The policy also includes a statement to clarify that, consistent with current practice, Regents shall maintain the confidentiality of deliberations held in closed session, and updates certain references to orientation and ethics training required for Board members.

Relevant Regent Policies

- [RPD 2-4, “Ethics and Conflict of Interest Policy for the UW System Board of Regents”](#)
- [RPD 13-1, “General Contract Approval, Signature Authority, and Reporting”](#)
- [RPD 20-22, “Code of Ethics”](#)

ATTACHMENTS

- A) RPD 2-2, “Statement of Expectations for Board Members” – Proposed Policy
- B) RPD 2-2, “Statement of Expectations for Board Members” – Current Policy

Regent Policy Document 2-2 – *PROPOSED POLICY*
Statement of Expectations for Board Members

Scope

This policy establishes expectations for the members of the UW System Board of Regents.

Purpose

The Board of Regents has primary responsibility for governance of the University of Wisconsin System. Wis. Stats. § 36.09(1) states:

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

Each member of the Board must be willing to make a strong and sustained personal commitment of time, talent and energy in order to meet the challenges of this demanding role. The purpose of this policy is two-fold: First, to inform potential nominees to the Board of the level of commitment they will be asked to make as a member of the Board of Regents; and second, to inform the public of the Board’s expectations of its members.

Policy Statement

It is the policy of the Board of Regents that each member of the Board meets the following expectations:

- a. To be well-informed: Each Regent shall strive to understand the University of Wisconsin System, its mission, structure, programs, financial framework, strengths, challenges, and current issues; the role of the governing board; the role of UW System Administration; the roles of faculty, academic staff, and students; relationships between the University of Wisconsin System and other state agencies; the state and national higher education environment. This includes:
 1. Participation in an orientation session for new Board members to include review of Wisconsin’s Code of Ethics for Public Officials and Employees, Wisconsin Open Meetings Law, Wisconsin’s Public Records Law, and conflict of interest training, .
 2. Participation in Regent visits to University of Wisconsin System campuses to view facilities and meet with faculty, staff, administrators, and students.

3. Thorough review of agenda materials and other information pertinent to issues before the Board and careful consideration of options for addressing these issues.
 4. Meeting with Chancellors, University of Wisconsin System officials, and key executive branch and legislative officials, to share views and concerns.
 5. Understanding the special mission and character of each of the University of Wisconsin Institutions.
 6. Obtaining views of the public about the University of Wisconsin System.
 7. Responding appropriately to constituent questions and concerns.
- b. To be an active and contributing participant in the work of the Board of Regents. This includes, but is not limited to:
1. Regular attendance at meetings of the Board and standing committees.
 2. Service on special Regent committees and on external boards related to the mission of the UW System such as the UW Hospital and Clinics Authority Board, the Higher Educational Aids Board, and the Wisconsin Technical College System Board.
 3. Speaking with executive and legislative branch decision makers and other stake holders to obtain input and explain Board positions.
 4. Attending University functions.
 5. Giving a fair and objective hearing to differing opinions.
 6. Discussing issues fully, but accepting and supporting the Board's decision once it is made.
 7. Representing the public interest in general and not the interest of any particular constituency.
- c. To adhere to high standards of ethical conduct and to comply fully with laws relating to conduct of public officials and boards. This includes, but is not limited to:
1. Avoidance of any conflict of interest and adherence to the standards of conduct for public officials, as set forth in the Code of Ethics for Public Officials and Employees and the Board's policy related to Ethics and Conflict of Interest for the UW System Board of Regents. In the case of any potential conflict of interest, the Board member is expected to seek clarification. Where a conflict of interest is found to exist, the Board member must abstain from participating in the discussion and from voting on the matter in question.
 2. Timely filing of annual financial disclosure statements as required by the Wisconsin Code of Ethics for Public Officials and Employees.
 3. Full compliance with the Open Meetings and Public Records laws.
 4. Maintenance of confidentiality when appropriate or required by law. Board members shall maintain the confidentiality of all deliberations held in closed session.

- d. To accept responsibility for effectively and efficiently governing the University of Wisconsin System in the public interest. This includes, but is not limited to:
 1. Preservation and enhancement of educational quality.
 2. Sound financial management.
 3. Prudent stewardship of University assets.
 4. Appointment and systematic annual performance evaluation of the University of Wisconsin Chancellors and President.
 5. Planning of programs and allocation of limited resources so as to most effectively serve the higher educational needs of Wisconsin citizens.
 6. Establishment and maintenance of a strong system of accountability to the public for performance results.
 7. Strategic planning to address future needs.
 8. Advocacy for the value of higher education to the state and its citizens.
 9. Representation of the public interest to the University.
 10. Addressing legal issues related to litigation affecting the University of Wisconsin System.
 11. Periodic Board assessment, including periodic review of the Bylaws of the Board of Regents of the University of Wisconsin System.

Oversight, Roles, and Responsibilities

Each Regent shall be responsible for complying with the provisions of this policy.

The Office of the Board of Regents shall be responsible for organizing orientation sessions.

Related Regent Policies and Applicable Laws

Subch. III, Chapter 19, Wis. Stats., "Code of Ethics for Public Officials and Employees"

s. 36.09(1), Wis. Stats., "The Board of Regents"

s. 36.11, Wis. Stats., "Powers and Duties of the Board of Regents"

s. 36.23, Wis. Stats., "Conflict of Interest"

s. 946.13, Wis. Stats., "Private Interest in Public Contract Prohibited"

RPD 2-4, "Ethics and Conflict of Interest Policy for the UW System Board of Regents"

RPD 13-1, "General Contract Approval, Signature Authority, and Reporting"

Regent Policy Document 2-2 – *CURRENT POLICY*

The Board of Regents has primary responsibility for governance of the University of Wisconsin System. Wis. Stats. § 36.09(1) provides:

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

Each member of the Board must be willing to make a strong and sustained personal commitment of time, talent and energy in order to meet the challenges of this demanding role. The purpose of this statement is two-fold: First, to inform potential nominees to the Board of the level of commitment they will be asked to make; and second, to inform the public of what the Board expects of its members. These expectations are as follows:

- a. To be well-informed: To understand the University of Wisconsin System, its mission, structure, programs, financial framework, strengths, challenges, and current issues; the role of the governing board; the role of System Administration; the roles of faculty, academic staff, and students; relationships between the University of Wisconsin System and other state agencies; the state and national higher education environment. This includes:
 1. Participation in a one-day orientation session for new Board members. Preparation for this session involves review of material provided in advance.
 2. Participation in a follow-up session after one year on the Board.
 3. Participation in Regent visits to University of Wisconsin System campuses to view facilities and meet with faculty, staff, administrators, and students. Participation in an orientation session about the UW System’s extension and outreach programs.
 4. Thorough review of agenda materials and other information pertinent to issues before the Board; careful consideration of options for addressing these issues; and participation in pre-Board meeting briefings.
 5. Participation in briefing sessions on biennial operating and capital budgets.
 6. Meeting with Chancellors, University of Wisconsin System officials, and key executive branch and legislative officials, to share views and concerns.
 7. Understanding the special mission and character of each of the University of Wisconsin Institutions.
 8. Obtaining views of the public about the University of Wisconsin System.

9. Responding appropriately to constituent questions and concerns.
- b. To be an active and contributing participant in the work of the Board of Regents. This includes, but is not limited to:
 1. Regular attendance at meetings of the Board and standing committees (about 20 days per year).
 2. Service on special Regent committees, meetings of which may be scheduled between monthly Board meetings.
 3. Speaking with executive and legislative branch decision makers and other stake holders to obtain input and explain Board positions.
 4. Attending University functions.
 5. Giving a fair and objective hearing to differing opinions.
 6. Discussing issues fully, but accepting and supporting the Board's decision once it is made.
 7. Representing the public interest in general and not the interest of any particular constituency.
- c. To adhere to high standards of ethical conduct and to comply fully with laws relating to conduct of public officials and boards. This includes, but is not limited to:
 1. Avoidance of any conflict of interest and adherence to the standards of conduct for public officials, as set forth in the [Code of Ethics](#). In the case of any potential conflict of interest, the Board member is expected to seek clarification. Where a conflict of interest is found to exist, the Board member must abstain from participating in the discussion and from voting on the matter in question.
 2. Timely filing of annual financial disclosure statements as required by the Code of Ethics.
 3. Full compliance with the Open Meetings and Public Records laws.
 4. Maintenance of confidentiality when appropriate.
- d. To accept responsibility for effectively and efficiently governing the University of Wisconsin System in the public interest. This includes, but is not limited to:
 1. Preservation and enhancement of educational quality.
 2. Sound financial management.
 3. Prudent stewardship of University assets.
 4. Appointment and systematic annual performance evaluation of the University of Wisconsin Chancellors and President.

5. Planning of programs and allocation of limited resources so as to most effectively serve the higher educational needs of Wisconsin citizens.
6. Establishment and maintenance of a strong system of accountability to the public for performance results.
7. Strategic planning to address future needs.
8. Advocacy for the value of higher education to the state and its citizens.
9. Representation of the public interest to the University.
10. Addressing legal issues related to litigation affecting the University of Wisconsin System.
11. Periodic Board assessment.

History: Res. 6476 adopted 7/16/93. Technical corrections made on 11/15/2018, as authorized by Res. 10835 (adopted 3/9/2017).

**CHANGES TO THE UW SYSTEM BOARD OF REGENTS
REGULAR MEETING SCHEDULE FOR 2021**

REQUESTED ACTION

Adoption of Resolution 16., approving changes to the 2021 regular meeting schedule for the Board of Regents.

Resolution 16. That, upon the recommendation of the Executive Director and Corporate Secretary, the Board of Regents authorizes the President of the Board to change the locations of the 2021 meetings to virtual meetings, if necessary, due to the COVID-19 pandemic. The Board further authorizes canceling one day of previously scheduled two-day meetings if the Board's business can be conducted in one day.

SUMMARY

Regular meeting dates are determined based on Chapter 1, Section 2 of the Bylaws of the Board of Regents. In June 2020, the Board of Regents approved a regular-meeting schedule for 2021.

This resolution authorizes the Regent President to change the locations of any in-person regular meetings scheduled for 2021 to virtual meetings, as necessary, to comply with COVID-19 social distancing and other health and safety practices recommended by the federal Center for Disease Control and Prevention. In addition, the meetings may be changed to one-day meetings, if in the judgment of the President of the Board, the Board's business can be conducted in one day, instead of two.

The 2021 regular-meeting schedule is included as Attachment A.

The Bylaws of the Board of Regents do not allow for the cancellation of one day of a previously scheduled two-day meeting hosted by a UW institution. As such, approval of potential changes to the 2021 regular meeting schedule requires a suspension of the Board's bylaws. As detailed in Chapter IV, Section 2 of the Bylaws of the Board of Regents, a suspension of the Board's bylaws requires an affirmative vote of two-thirds of the total members of the Board of Regents.

BACKGROUND

Among the responsibilities of the Executive Director and Corporate Secretary is making a recommendation for a calendar of regular meetings.

ATTACHMENTS

- A) Board of Regents regular meeting schedule for 2021

UW SYSTEM BOARD OF REGENTS REGULAR MEETING SCHEDULE – 2021*

February 4-5, 2021 – Hosted by UW-Madison

March 4, 2021 – In Madison**

April 8-9, 2021 – Hosted by UW-Stout

June 3-4, 2021 – Hosted by UW-Milwaukee

July 8-9, 2021 – In Madison**

October 7-8, 2021 – Hosted by UW-Oshkosh

November 4, 2021 — In Madison**

December 9-10, 2021 – In Madison**

*Meetings may be changed to virtual meetings

**Hosted by the Board of Regents Office at Gordon Dining & Event Center

**APPROVAL OF REVISED RULE LANGUAGE AND
ADMINISTRATIVE CODE RULE ORDERS FOR
CHAPTERS UWS 4, 7, 11, AND 17**

REQUESTED ACTION

Adoption of Resolution 17., approving revised rule language and Administrative Code Rule Orders for Chs. UWS 4, 7, 11, and 17, Wis. Admin. Code, "Procedures for Dismissal," "Dismissal of Faculty in Special Cases," "Dismissal of Academic Staff for Cause," and "Student Nonacademic Disciplinary Procedures."

Resolution 17. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves revised rule language and Administrative Code Final Rule Orders for Chs. UWS 4, 7, 11, and 17, Wis. Admin. Code, "Procedures for Dismissal," "Dismissal of Faculty in Special Cases," "Dismissal of Academic Staff for Cause," and "Student Nonacademic Disciplinary Procedures."

SUMMARY

Title IX of the Education Amendments of 1972 requires that all educational institutions that receive federal funds eliminate sex discrimination in their education programs and activities (34 C.F.R. Part 106). The U.S. Department of Education (ED) released final regulations effective August 14, 2020, establishing educational institutions' responsibilities in responding to reports of sexual harassment, sexual assault, dating violence, domestic violence, and stalking involving faculty, staff, and students.

In August 2020, the University of Wisconsin System (UW System) implemented emergency rules to modify Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code to comply with the new federal regulations. The UW System is now seeking approval of permanent rules to comply with these new federal regulations.

The proposed permanent rules do not substantively differ from the emergency rules previously approved by the Board of Regents or from drafts of the permanent rules provided to the Board at its November meeting. Additional changes in the proposed

permanent rules (Attachment A) primarily address comments Legislative Council provided in its report, such as grammar and formatting changes.

If the Board of Regents approves Resolution 17, the rule orders (Attachment B), which contain the permanent rule language and a plain language analysis of each rule, will be submitted to the Office of the Governor pursuant to s. 227.185, Wis. Stats., for review and potential approval. If approved by the Governor, the rules will proceed to the State Legislature for review and potential approval.

A public hearing on the rules was held on November 30, 2020. Attachment C contains a summary of the comments received at the hearing and the preceding public comment period.

Presenter

- Sarah Harebo, UW System Title IX and Clery Administrator

BACKGROUND

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

The Board has statutory authority to engage in rulemaking for Chapters UWS 4, 7, 11, and 17 under Wis. Stat. 36.09(1)(a), Wis. Stat. 36.15(3), and Wis. Stat. 36.35(1).

Outline of Major Substantive Changes

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

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

Definitions

The new federal regulations require the adoption of the federal Clery Act and Violence Against Women Act definitions for sexual assault, dating violence, domestic

violence, and stalking. Previous UWS code definitions mirrored the Wisconsin criminal statutes.

The definition of sexual harassment for Title IX purposes includes quid pro quo sexual harassment and “unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectionably offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an university sponsored or supported activity.” Prior to these changes, the standard mirrored Title VII in requiring that conduct be “severe or pervasive (and objectionably offensive).” Conduct that meets the Title VII standard but does not meet the new Title IX standard will continue to be addressed under UW System conduct codes.

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

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

Title IX Sexual Misconduct Procedures

Notice

The new federal regulations require that notice to parties of formal Title IX complaints outline the grievance process, explain the allegations of sexual misconduct with sufficient detail, include a statement that the respondent is presumed not responsible, inform parties of their right to an advisor and to

review evidence, and cite to any UW System policy provisions that prohibit making a false statement.

Mandatory Dismissal and Discretionary Dismissal

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

Investigation

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

Hearing

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

Recent Previous Action or Discussion

UWS 4, 7, 11, and 17

The Board last discussed this topic at its November 5, 2020, meeting when the Board approved draft permanent rules for submission to Legislative Council for review, a Notice of Public Hearing on the draft permanent rules, and a Notice of Submittal to Legislative Council. Previously, at its August 5, 2020, meeting, the Board approved emergency rules for Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code to bring those rules into compliance with Title IX prior to the August 14, 2020, effective date of the new federal regulations. This approval occurred after the preliminary hearing and public comment period regarding the rule scope statements, which the Board approved at its July 9, 2020 meeting.

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

The Board of Regents amended RPD 14-2 through the adoption of Resolution 11475 in August 2020 to create an interim Title IX policy that incorporated changes related to Title IX sexual misconduct required by the new federal regulations and extended those changes to other University employees besides faculty and academic staff. Faculty and academic staff sexual misconduct is addressed in UWS 4 and 7 and UWS 11 respectively.

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"

ATTACHMENTS

- A) Final rule language - redlines indicate changes from the draft language provided in the November Board of Regents Meeting
- B) Final Rule Orders
- C) Summary of Public Comments

Chapter UWS 4

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

Subchapter I - General

UWS 4.01 Dismissal for cause.

UWS 4.015 Definitions.

Subchapter II - Procedures for Faculty Dismissal in Non-Title IX ~~Related~~ Cases

UWS 4.016 Subchapter II Definitions

UWS 4.02 Responsibility for charges.

UWS 4.03 Standing faculty committee.

UWS 4.04 Hearing.

UWS 4.05 Adequate due process.

UWS 4.06 Procedural guarantees.

UWS 4.07 Recommendations to the chancellor and the regents.

UWS 4.08 Board review.

UWS 4.09 Suspension from duties.

UWS 4.10 Date of dismissal.

Subchapter III - Procedures for Faculty Dismissal and Discipline in Title IX ~~Related~~ Cases

UWS 4.11 Subchapter III Definitions.

UWS 4.12 Dismissal for cause or lesser discipline for Title IX misconduct.

UWS 4.13 Application of Title IX misconduct disciplinary procedure.

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

UWS 4.15 Investigation of Title IX misconduct allegations.

UWS 4.16 Review of evidence.

UWS 4.17 Final investigative report.

UWS 4.18 Standing faculty committee and hearing examiner.

UWS 4.19 Adequate due process.

UWS 4.20 Procedural guarantees.

UWS 4.21 Hearing committee or hearing examiner findings and recommendations to the chancellor.

UWS 4.22 Chancellor's decision.

UWS 4.23 Appeal to board.

UWS 4.24 Suspension from duties.

Subchapter I - General

UWS 4.01 Dismissal for cause.

- (1) Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the end of the faculty member's term of appointment only by the board and only for just cause and only after due notice and hearing. A decision not to renew a probationary appointment or not to grant tenure does not constitute a dismissal.

- (2) A faculty member is entitled to enjoy and exercise all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.
- (3) Faculty dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in UWS 4.11, shall be governed by ss. UWS 4.11 to 4.24. ~~Section UWS 4.01(1) and (2) and ss. UWS 4.02 to 4.10 may not apply to faculty dismissal based on Title IX misconduct.~~

UWS 4.015 Definitions. In this chapter:

- (1) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."
- (2) "Complaint" means an allegation against a faculty member reported to an appropriate university official.
- (3) "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in this section. A person is unable to give consent if the person is incapacitated in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.
- (4) "Consult" or "consulting" means thoroughly reviewing and discussing the relevant facts and discretionary issues.
- (5) "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (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 as per ss. 813.12(1)(am) and 968.075, Stats.
- (6m) "Incapacitation" means the state of being unable to physically ~~and~~ or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs.

Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol ~~and/or~~ drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

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

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

(9) "Sexual 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~~the complainant's age or because of ~~their~~the complainant's 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 948.02, Stats.

(10) "Sexual exploitation" means ~~when an individual attempts, takes~~attempting, taking or ~~threatens~~threatening to take, nonconsensual sexual advantage of another person. Examples include:

(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 activity.

(d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.

(e) Coercing the complainant to engage in sexual activity for money or anything of value.

(f) Threatening distribution of 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.

(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.

Subchapter II - Procedures for Faculty Dismissal in Non-Title IX **Related** Cases

UWS 4.016 Subchapter II Definitions. In this subchapter:

(1) "Complainant" means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation as defined in this section.

(2) "Sexual harassment" means conduct on the basis of sex that satisfies any of the following:

(a) *Quid pro quo* sexual harassment:

1. 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; or

2. An employee of the institution either explicitly or implicitly conditions the provision of an academic, professional, or employment-related opportunity, aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

(b) *Hostile environment sexual harassment*÷

1. Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity; or
2. Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal “reasonable person” standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an university sponsored or supported activity.

UWS 4.02 Responsibility for charges.

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

UWS 4.03 Standing faculty committee.

The faculty of each institution shall provide a standing committee charged with hearing dismissal cases and making recommendations under this chapter. This standing faculty committee shall operate as the hearing agent for the board pursuant to s. [227.46 \(4\)](#), Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of law and decision to the board according to s. [UWS 4.07](#).

UWS 4.04 Hearing.

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

UWS 4.05 Adequate due process.

- (1) A fair hearing for a faculty member whose dismissal is sought under s. [UWS 4.01](#) shall include the following:
 - (a) Service of written notice of hearing on the specific charges at least 10 days prior to the hearing;
 - (b) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
 - (c) A right to be heard in -the faculty member's defense;
 - (d) A right to an advisor, counsel, or other representatives, and to offer witnesses;
 - (e) A right to confront and cross-examine adverse witnesses. If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, -sexual exploitation, or stalking, the hearing committee may reasonably restrict the faculty member or the complainant from questioning each other;
 - (f) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
 - (g) Written findings of fact and decision based on the hearing record;
 - (h) Admissibility of evidence governed by s. [227.45 \(1\)](#) to [\(4\)](#), Stats.
- (2) If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence sexual exploitation, or stalking, the complainant shall have all the rights provided to the faculty member in sub. [\(1\) \(a\)](#) to [\(h\)](#), except as may be precluded by applicable state or federal law.

UWS 4.06 Procedural guarantees.

- (1) Any hearing held shall comply with the requirements set forth in s. [UWS 4.05](#). The following requirements shall also be observed:
- (a) The burden of proof of the existence of just cause is on the administration or its representatives;
 - (am) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the standard of proof shall be a preponderance of the evidence;
 - (b) No faculty member who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall be qualified to sit on the committee in that case;
 - (c) The hearing shall be closed unless the faculty member under charges requests an open hearing, in which case it shall be open (see subch. [V of ch. 19](#), Stats., Open ~~Meeting Law~~; [Meetings of Governmental Bodies](#));
 - (d) The faculty hearing committee may, on motion of either party, and, if the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, on the motion of the complainant, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under s. [UWS 4.03](#);
 - (e) The faculty hearing committee shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges;
 - (f) If the faculty hearing committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel shall be to advise the committee, consult with them on legal matters, and such other responsibilities as shall be determined by the committee within the provisions of the rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under s. [UWS 4.03](#);
 - (g) If a proceeding on charges against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, the faculty member may elect that such proceeding be carried to a final decision. Unless the faculty member so elects in writing, the proceeding shall be discontinued at the expiration of the appointment;

- (h) If a faculty member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit;
- (i) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration and the faculty member, with board approval, at any time prior to a final decision by the board;
- (j) Adjournment shall be granted to enable the parties, including the complainant, to investigate evidence as to which a valid claim of surprise is made.

UWS 4.07 Recommendations to the chancellor and the regents.

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

UWS 4.08 Board review.

- (1) If the chancellor recommends dismissal, the board shall review the record before the faculty hearing committee and provide an opportunity for filing exceptions to the recommendations

of the hearing committee or chancellor, and for oral arguments, unless the board decides to drop the charges against the faculty member without a hearing or the faculty member elects to waive a hearing. This hearing shall be closed unless the faculty member requests an open hearing (see subch. [V of ch. 19](#), Stats., Open ~~Meeting Law~~). [Meetings of Governmental Bodies](#)). For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have the same opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, as the faculty member.

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

UWS 4.09 Suspension from duties.

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

UWS 4.10 Date of dismissal.

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

Subchapter III - Procedures for Faculty Dismissal [and Discipline](#) in Title IX ~~Related~~ Cases

UWS 4.11 Subchapter III Definitions. In this subchapter:

- (1) "Complainant" means any individual who is alleged to be the subject of Title IX misconduct as defined in this section.
- (2) "Education program or activity" means, for purposes of Title IX misconduct only, locations, events, or circumstances at which the university exercised substantial control over both the faculty member and the context in which the misconduct occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

- (3) “Formal Title IX complaint” means, for the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against a faculty member and requesting that the university investigate the allegations. At the time of filing of the formal Title IX 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 Title IX complaint shall include a physical or digital signature of the complainant or the Title IX Coordinator.
- (4) “Respondent” means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.
- (5) “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
- (a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct.
 - (b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, 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.
- (6) “Title IX misconduct” means sexual ~~harassment, sexual~~ assault, stalking, dating violence, or domestic violence as defined in this ~~section, chapter and sexual harassment as defined in sub. (5).~~

UWS 4.12 Dismissal for cause or lesser discipline for Title IX misconduct.

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

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

- (1) There is a formal Title IX complaint alleging Title IX misconduct on the basis of sex.
- (2) The conduct occurred in the United States.
- (3) The conduct occurred within a university's education program or activity.
- (4) The complainant must be participating in or attempting to participate in the education program or activity of the university at the time of filing the formal Title IX complaint.
- (5) The complainant or Title IX coordinator ~~have~~has submitted a formal Title IX complaint.

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

- (1) The university shall dismiss ~~formal~~a formal Title IX ~~complaints~~complaint consisting of allegations that meet any of the following conditions:

- (a) The alleged conduct would not constitute Title IX misconduct if proved.
- (b) The alleged conduct did not occur in a university education program or activity.
- (c) The alleged conduct did not involve actions against someone physically located in the United States.

- (2) The university may dismiss a formal Title IX complaint under any of the following circumstances:

- (a) The complainant formally requests in writing to withdraw the formal Title IX 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 Title IX complaint.

- (3) The university generally shall decide whether to dismiss a formal Title IX complaint within 30 days of receipt of the formal complaint, but ~~-~~ 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 or faculty member may appeal the dismissal by filing a written appeal with the chancellor. The complainant or faculty member 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 or respondents 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) The dismissal of a formal Title IX complaint does not preclude the university from otherwise pursuing discipline or dismissal against the faculty member under other administrative rules or university policies.

UWS 4.15 Investigation of Title IX misconduct allegations.

- (1) Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.
- (2) The investigator shall provide the faculty member and the complainant with a notice of investigation. The notice 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.

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 have 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.

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, the 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 at least 10 days prior to a hearing. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless both the faculty member and the complainant waive, in writing, the right to such a hearing.

UWS 4.18 Standing faculty committee and hearing examiner.

- (1) The chancellor of each university, in consultation with faculty representatives, shall adopt policies providing for the designation of a Title IX misconduct hearing examiner. The chancellor shall select a hearing examiner 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 a hearing examiner or a hearing committee will hear the matter.
- (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 no later than 45 days after completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner.

UWS 4.19 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 for the complainant and faculty member to be heard on their own behalf.
- (d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The faculty member's or complainant's advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. If the faculty member or complainant does not have an advisor, the university shall provide the faculty member or the complainant, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the faculty member or complainant. The advisor may be an attorney.
- (e) A right to confront and cross-examine adverse witnesses. The faculty member's or complainant's advisor shall conduct cross examination directly, orally, and in real time. 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 the complainant and faculty member to appeal.
 - (h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats. Only relevant questions may be asked of the faculty member, the complainant, and any witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the faculty member committed the conduct alleged by the complainant, or unless the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the faculty member and are offered to prove consent;
 - (i) Upon the faculty member's or complainant's request, the university shall provide for the hearing to occur with the faculty member and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the faculty member, and the complainant to simultaneously see and hear witnesses answering questions.
- (2) The complainant shall have all the rights provided to the faculty member in sub. (1) (a) to (i).

UWS 4.20 Procedural guarantees.

- (1) Any hearing held shall comply with the requirements set forth in the preceding section. 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 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 Title IX 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 Title IX 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.

Note: See subch. V of ch. 19, Stats., Open ~~Meeting Law~~. Meetings of Governmental Bodies.
 - (d) The hearing committee may, on motion of the complainant or the faculty member, disqualify any one of its members for cause by a majority vote. If one or more of the

hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under this rule.

- (e) The hearing committee or the hearing examiner shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules in s. UWS 4.19(1)(h).
- (f) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the hearing committee concerning its wishes in this regard. The function of legal counsel shall be to advise the hearing committee, consult with them on legal matters, and such other responsibilities as shall be determined by the hearing committee within the provisions of the rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under this policy.
- (h) Nothing in this section shall prevent the settlement of cases by mutual agreement between the university administration, the complainant, and the faculty member.
- (i) Delay or adjournment of the hearing for good cause may be granted. Good cause includes the need for 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 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.

UWS 4.21 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 faculty member concerned, within 30 days after the conclusion of the hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations.

UWS 4.22 Chancellor's decision.

- (1) Within 20 days after receipt of the record and findings and recommendations from the hearing committee or the hearing examiner the chancellor shall review those materials and afford the faculty member and the complainant an opportunity to discuss them. The chancellor's decision shall be based on the record created before the hearing committee or the hearing examiner. The chancellor shall prepare a written decision within 20 days after completing the meetings with the faculty member and the complainant, unless the chancellor's proposed decision differs substantially from the recommendations of the hearing committee or hearing examiner. If the chancellor's proposed decision differs substantially from those recommendations, the chancellor shall promptly consult the hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a decision.
- (2) The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations.
- (3) The chancellor's decision shall be simultaneously sent to the faculty member concerned, the complainant, and to the hearing committee or the hearing examiner. The chancellor's decision also shall be submitted through the president of the system to the board, accompanied by a copy of the hearing committee's or hearing examiner's findings and recommendations. The chancellor's decision and the findings and recommendations shall be forwarded through the president of the system to the board for its review.

UWS 4.23 Appeal to board.

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

Note: See subch. [V of ch. 19](#), Stats., Open ~~Meeting Law~~ [Meetings of Governmental Bodies](#).

- (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~~ (c) Conflict of interest or bias for or against the faculty member or complainant, or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that affected the outcome.

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

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

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

UWS 4.24 Suspension from duties. Pending the final decision on dismissal or other discipline, the faculty member 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.

Chapter UWS 7

PROCEDURES FOR FACULTY ~~DISMISSAL OF FACULTY~~ IN SPECIAL CASES

UWS 7.01	Declaration of policy.
UWS 7.015	Definitions.
UWS 7.02	Serious criminal misconduct.
UWS 7.03	Dismissal for cause.
UWS 7.04	Reporting responsibility.
UWS 7.05	Expedited process.
UWS 7.06	Temporary suspension without pay.

UWS 7.01 Declaration of policy.

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

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

UWS 7.015 Definitions.

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

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

UWS 7.02 Serious criminal misconduct.

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

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

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

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

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

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

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

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

(3) Except as otherwise expressly provided, a faculty member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. [UWS 7.03](#) to [7.06](#).

(4) Any act required or permitted by ss. [UWS 7.03](#) to [7.06](#) to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies approved by the Board of Regents under s. [UWS 2.02](#).

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

UWS 7.03 Dismissal for cause.

(1) Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the end of the term of appointment only by the board and only for just cause and only after due notice and hearing.

- (2) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. [UWS 7.02](#).

History: [CR 06-078](#): cr. [Register May 2007 No. 617](#), eff. 6-1-07.

UWS 7.04 Reporting responsibility.

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

History: [CR 06-078](#): cr. [Register May 2007 No. 617](#), eff. 6-1-07.

UWS 7.05 Expedited process.

- (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. [UWS 7.04](#) or other credible information that a faculty member has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. [UWS 7.02 \(1\) \(a\)](#), in state or federal court, the chancellor shall:
- (a) Within 3 working days of receipt of the report or information, inform the faculty member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and to advise the chancellor as to whether to proceed under this section or ch. [UWS 4](#). If the identity of an affected party is known to the university, the university shall make a reasonable attempt to notify the affected party of the report or information at the same time as the 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.
- (2) The investigator shall complete and file a report with the chancellor not later than 10 working days following the investigator's appointment.
- (3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the faculty member pursuant to this chapter, to seek dismissal of the faculty member pursuant to ch. [UWS 4](#), to seek an alternative disciplinary sanction, or to discontinue the proceedings- ~~as follows:~~
- (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.
- (4) If charges seeking dismissal are filed under sub. [\(3\) \(a\)](#), the faculty member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. [UWS 4.03](#). The hearing shall provide the procedural guarantees enumerated under ss. [UWS 4.05 to 4.06](#), except that the hearing shall be concluded, and written findings and a recommendation to the chancellor shall be prepared, within 15 working days of the filing of charges.
- (5)
 - ~~(a)~~ Within 3 working days of receipt of the findings and recommendation of the committee under sub. [\(4\)](#), the chancellor shall prepare a written recommendation on the matter as follows:
 - ~~(b)~~ If the recommendation is for dismissal, the chancellor shall transmit it to the board for review.
 - ~~(c)~~ Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the board at its option grants a review on the record at the request of the faculty member. The faculty member shall receive a copy of the chancellor's final decision. If the identity of an affected party is known to the university, the university shall make a reasonable attempt to provide the affected party a copy of the chancellor's final decision at the same time as the faculty member.
- (6) Upon receipt of the chancellor's recommendation, the full board shall review the record before the institutional hearing committee and shall offer an opportunity for filing exceptions to the recommendation, and for oral argument. The full board shall issue its decision on the matter within 15 working days of receipt of the chancellor's recommendation. If the identity of an affected party is known to the university, the board shall make a reasonable attempt to notify the affected party of its decision at the same time as the faculty member.
- (7) If a faculty member whose dismissal is sought under sub. [\(3\) \(a\)](#) does not proceed with the hearing before the institutional hearing committee as provided in sub. [\(4\)](#), the board shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.
- (8) The administration or its representatives shall have the burden of proof to show that just cause exists for dismissal under this chapter. The administration must demonstrate by clear and convincing evidence that the faculty member engaged in serious criminal misconduct, as defined in s. [UWS 7.02](#).
- (9) The chair of the faculty hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

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

UWS 7.06 Temporary suspension without pay.

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

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

Chapter UWS 11

~~DISMISSAL OF PROCEDURES FOR~~ ACADEMIC STAFF ~~FOR~~ ~~CAUSED~~ DISMISSAL AND FOR DISCIPLINE AND DISMISSAL IN TITLE IX CASES

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Subchapter I - General

UWS 11.01 Dismissal for cause-indefinite academic staff appointments.

- (1) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under ss. [UWS 11.02](#) through ~~11.106~~ [11.10 and 11.29 through 11.33](#) or for reasons of budget or program under ch. [UWS 12](#).
- (2) The board's policy is that members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.
- (3) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. ~~UWS 11.102~~ [UWS 11.29](#).
- (4) Indefinite appointment academic staff dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in [UWS 11.13](#), shall be governed by ss. [UWS 11.13](#) to [11.26](#).

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

UWS 11.015 Definitions. In this chapter:

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

~~(2)-(3)~~ ["Complaint" means an allegation against an academic staff member reported to an appropriate university official.](#)

(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 the definitions of sexual assault and sexual exploitation in this section. A person is unable to give consent if the person is ~~incapacitated~~ in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

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

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

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

(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 as per ss. 813.12(am) and 968.075, Stats.

(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.

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

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

(9) “Sexual 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~~the complainant’s age or because of ~~their~~the complainant’s 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.

(10) “Sexual exploitation” ~~occurs when an individual attempts, takes~~means- attempting, taking or ~~threatens~~threatening to take, nonconsensual sexual advantage of another person. Examples include:

(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 activity.

(d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.

(e) Coercing the complainant to engage in sexual activity for money or anything of value.

(f) Threatening distribution of 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.

(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.

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

Subchapter II - Procedures for Academic Staff Dismissal in Non-Title IX ~~Related~~ Cases

UWS 11.016 Subchapter II definitions. In this subchapter:

(1) "Complainant" ~~as~~ means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this section.

(2) "Sexual harassment" means conduct on the basis of sex that satisfies any of the following:

(a) *Quid pro quo* sexual harassment:

1. 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.
2. An employee of the institution either explicitly or implicitly conditions the provision of an academic, professional, or employment-related opportunity, aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

(b) *Hostile environment* sexual harassment:

1. Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal "reasonable person" standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity.
2. Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal "reasonable person" standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering

with an individual's academic or work performance or participation in an university sponsored or supported activity.

UWS 11.02 Responsibility for charges.

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

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

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

UWS 11.03 Hearing body.

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

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

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

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

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

UWS 11.05 Adequate due process.

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

- (a) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
- (b) A right to be heard in ~~their~~ the academic staff member's defense;
- (c) A right to an advisor, counsel, or other representative, and to offer witnesses;
- (d) A right to confront and cross-examine adverse witnesses. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual

exploitation, or stalking, the hearing committee may reasonably restrict the academic staff member and the complainant from questioning each other;

- (e) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
- (f) Written findings of fact and decision based on the hearing record;
- (g) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.

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

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

UWS 11.06 Procedural guarantees.

(1) The following requirements shall also be observed:

- (a) Any person who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall not be qualified to participate as a member of the hearing body;
- (b) The hearing shall be closed unless the staff member under charges requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., Open ~~Meeting~~ Law Meetings of Governmental Bodies);
- (c) The hearing body shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges;
- (d) The burden of proof of the existence of just cause is on the administration or its representatives;
- (dm) For complaints of sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the standard of proof shall be a preponderance of the evidence;

- (e) If a staff member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit;
- (f) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration and the staff member, with the chancellor's approval, at any time prior to a final decision by the chancellor; or when appropriate, with the board's approval prior to a final decision by the board;
- (g) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

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

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

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

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

unless the board, upon request of the academic staff member, grants review based on the record. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have all rights provided to the academic staff member in this paragraph.

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

UWS 11.08 Suspension from duties. Pending the final decision as to dismissal, the academic staff member with an indefinite appointment shall not be relieved of duties, except where, after consulting with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in ~~their~~the staff member's position. Where such determination is made, the staff member may be relieved of ~~their~~the staff member's position immediately, or be assigned to another administrative unit, but ~~their~~the staff member's 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)~~UWS 11.32 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. ~~UWS 11.105~~UWS 11.32 shall apply.

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

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

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

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

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

UWS 11.11 Dismissal for cause-fixed term or probationary academic staff appointments.

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

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

UWS 11.12 Dismissal for cause-teaching members of the academic staff. The policies and procedures of each institution may provide that dismissal for cause of a member of the academic staff having teaching responsibilities and holding a probationary appointment or a fixed term appointment may proceed under ss. [UWS 11.02](#) to [11.10](#). If the institutional policies and procedures do not specifically make such provisions, dismissal for cause shall be made pursuant to s. [UWS 11.11](#). Dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in UWS 11.13 shall be governed by UWS 11.13 to UWS 11.26.

Subchapter III - Procedures for Academic Staff Dismissal and Discipline in Title IX ~~Related~~
Cases

UWS 11.13 Subchapter III definitions. In this subchapter:

- (1) “Complainant” means any individual who is alleged to be the subject of Title IX misconduct as defined in this section
- (2) “Education program or activity” means, for purposes of Title IX misconduct only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the misconduct occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.
- (3) “Formal Title IX complaint” means, for the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against an academic staff member and requesting that the institution investigate the allegations. At the time of filing of the formal Title IX complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, by electronic mail, or any other method designated by the university. A formal Title IX complaint shall include a physical or digital signature of the complainant or the Title IX Coordinator.
- (4) “Respondent” means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.
- (5) “Sexual harassment” means conduct on the basis of sex that satisfies any of the following:
 - (a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct.
 - (b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, the conduct is so severe, pervasive, and objectionably

offensive that it effectively denies the person equal access to the institution's education program or activity.

(6) "Title IX misconduct" means sexual ~~harassment, sexual~~ assault, stalking, dating violence, or domestic violence as defined in this ~~section, chapter and sexual harassment as defined in sub. (5).~~

UWS 11.14 Dismissal for cause or lesser discipline for Title IX misconduct.

(1) ~~(1) The board may dismiss~~ An academic staff member may be dismissed for cause, or ~~imposes subject to~~ lesser discipline ~~on an academic staff member~~, for Title IX misconduct as ~~those terms are~~ the term is defined in s. UWS 11.13.

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

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

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

UWS 11.15 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 formal Title IX complaint alleging Title IX misconduct on the basis of sex.

(2) The conduct occurred in the United States.

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

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

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

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

(1) The university shall dismiss formal Title IX complaints consisting of allegations that meet any of the following conditions:

(a) The alleged conduct would not constitute Title IX misconduct if proved.

(b) The alleged conduct did not occur in a university education program or activity.

(c) The alleged conduct did not involve actions against someone physically located in the United States.

(2) The university may dismiss formal Title IX complaints under any of the following circumstances:

(a) The complainant formally requests in writing to withdraw the formal Title IX 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 Title IX complaint.

(3) The university generally shall decide whether to dismiss a formal Title IX complaint within 30 days of receipt of the formal complaint, but 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 academic staff member and complainant in writing.

(4) Within 20 days of receipt of the notice of dismissal, the complainant or academic staff member may appeal the dismissal by filing a written appeal with the chancellor. The complainant or academic staff member may appeal on 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 or respondents generally, that affected the dismissal decision.

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

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

UWS 11.17 Investigation of Title IX misconduct allegations.

- (1)** Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.
- (2)** The investigator shall provide the academic staff member and the complainant with a notice of investigation. The notice 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 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)-1** 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 do all of the following:
 - (a) Provide both the academic staff member and the complainant an equal opportunity to provide witnesses, including fact and expert witnesses, who may be interviewed by the investigators and other inculpatory and exculpatory evidence.
 - (b) Not restrict the ability of either the academic staff member or complainant to discuss the allegations under investigation or to gather and present relevant evidence.
 - (c) Provide the academic staff member and complainant the same opportunity to be accompanied by an advisor of their choice during meetings relating to the investigation but may limit the participation by the advisor so long as those limits are applied equally.
 - (d) Provide both the academic staff member and the complainant an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related

to the allegations raised in a formal complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from an academic staff member, complainant, or other source, so that the academic staff member and complainant can meaningfully respond to the evidence prior to conclusion of the investigation.

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

UWS 11.18 Review of evidence.

- (1) Prior to completion of the final investigative report, the investigator 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) The academic staff member and the complainant shall have 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.

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, the 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 at least 10 days prior to a hearing. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless the academic staff member and the complainant both waive, in writing, the right to such a hearing.

UWS 11.20 Standing academic staff committee and hearing examiner.

- (1)** The chancellor of each university, in consultation with academic staff representatives, shall adopt policies providing for the designation of a Title IX misconduct hearing examiner. The chancellor shall select a hearing examiner pursuant to these policies to hear academic staff dismissal and discipline cases. Additionally, the academic staff of each university shall provide a standing hearing committee charged with hearing academic staff dismissal and discipline cases. The chancellor shall appoint the presiding member of the hearing committee, who may be a hearing examiner. The university shall have the right to decide whether a hearing examiner or a hearing committee will hear the matter.
- (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 no later than 45 days after completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner.

UWS 11.21 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 for the complainant and academic staff member to be heard on their own behalf.
 - (d)** A right to an advisor, counsel, or other representatives, and to offer witnesses. The academic staff member's or complainant's advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. If the academic staff member or complainant does not have an advisor, the university shall provide the academic staff member or complainant, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the academic staff member or complainant. The advisor may be an attorney.
 - (e)** A right to confront and cross-examine adverse witnesses. The academic staff member's or complainant's advisor shall conduct cross examination directly, orally, and in real time. 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 Title IX misconduct.
 - 2. A description of the procedural steps taken from the receipt of the formal complaint through the hearing committee's or hearing examiner's decision, including any notifications to the academic staff member and the complainant, interviews with the academic staff member, the complainant, and witnesses, site visits, methods used to gather evidence, and hearings held.
 - 3. Conclusions regarding the application of the university's conduct rules and policies to the facts; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanction recommended to be imposed, and whether remedies designed to restore or preserve equal access to the university's educational program or activity will be provided to the complainant.
 - 4. The university's procedures and permissible bases for the complainant and academic staff member to appeal.
 - (h) Admissibility of evidence governed by s. [227.45 \(1\)](#) to [\(4\)](#), Stats. Only relevant questions may be asked of the academic staff member, the complainant, and any witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the academic staff member committed the conduct alleged by the complainant, or unless the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the academic staff member and are offered to prove consent.
 - (i) Upon the academic staff member's or complainant's request, the university shall provide for the hearing to occur with the academic staff member and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the academic staff member, and the complainant to simultaneously see and hear witnesses answering questions.
- (2) The complainant shall have all the rights provided to the academic staff member in sub. [\(1\)](#) [\(a\)](#) to [\(i\)](#).

UWS 11.22 Procedural guarantees.

(1) Any hearing held shall comply with the requirements set forth in the preceding section. 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 grounds 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.
- (d) 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.
- (e) The hearing shall be closed unless the academic staff member or the complainant requests an open hearing, in which case it shall be open.

Note: See subch. [V of ch. 19](#), Stats., Open ~~Meeting-Law~~[Meetings of Governmental Bodies](#) .

- (f) The hearing committee may, on motion of 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.
- (g) The hearing committee or the hearing examiner shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules in s. UWS 11.21(1)(h).
- (h) 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.

- (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.
- (i) 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.

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

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

UWS 11.24 Chancellor's decision

(1) After reviewing the matter on the record and considering any arguments submitted by the parties, the chancellor shall issue a decision. The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations. If the chancellor's proposed decision differs substantially from those recommendations, the chancellor shall promptly consult the hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a decision. In that decision, the chancellor may order dismissal of the academic staff member, may impose a lesser disciplinary action, or may find in favor of the academic staff member. The academic staff member shall be notified of the chancellor's decision in writing. The complainant shall be notified of the chancellor's decision at the same time as the academic staff member. This decision shall be deemed final unless the board, upon request of the academic staff member or complainant, grants review based on the record.

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

UWS 11.25 Appeal to the board.

- (1) ~~A member of~~ The academic staff member or ~~the~~ complainant may file an appeal of the chancellor's decision to the board. Any appeal must be made within 30 days of the date of the decision of the chancellor to dismiss. The board shall provide the academic staff member and ~~the~~ complainant an opportunity for filing written exceptions to the chancellor's decision, and for oral arguments, unless the academic staff member and the complainant waive in writing the right to file exceptions and for oral arguments. The hearing of any oral arguments shall be closed unless the academic staff member or the complainant requests an open hearing.

Note: See subch. V of ch. 19, Stats., Open ~~Meeting Law~~. Meetings of Governmental Bodies.

- (2) The academic staff member or complainant may file written exceptions to the chancellor's decision, and the board shall conduct its review of the chancellor's decision, on 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~~ (c) Conflict of interest or bias for or against the academic staff member or complainant, or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that affected the outcome.
- (3) If the board decides to take action different from the decision of the chancellor, then before taking final action the board shall consult with the chancellor.
- (4) The board shall make its decision based on the record created before the hearing committee or hearing examiner. Within 60 days of receipt of the chancellor's decision, or otherwise as soon as practicable, the board shall simultaneously notify the academic staff member and the complainant of the board's final decision, which shall include the board's rationale for its decision.
- (5) A decision by the board ordering dismissal of an academic staff member shall specify the effective date of the dismissal.

UWS 11.26 Suspension from duties in Title IX misconduct 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 the staff member's ~~this or her~~ position. Where such determination is made, the staff member may be relieved of ~~their~~ the staff member's position immediately, or be assigned to another administrative unit, but the staff member's ~~their~~ 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.~~10532~~ (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 11.~~10532~~ shall apply.

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

Subchapter IV - Procedures for Dismissal for cause in special cases - indefinite academic staff appointments.

UWS 11.27 Subchapter IV ~~definitions~~definition. In this subchapter:

~~(4)~~₂ “affected party” means any student, employee, visitor, or an individual participating in a university program or activity, who is a victim of an academic staff member’s serious criminal misconduct.

UWS 11.28 Dismissal for cause in special cases - indefinite academic staff appointments.

A member of the academic staff holding an indefinite appointment may be dismissed for serious criminal misconduct, as defined in s. UWS 11.29.

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

UWS 11.29 Serious criminal misconduct.

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

- (a)** Pleading guilty or no contest to, or being convicted of a felony, in state or federal court, where one or more of the conditions in par. (b), (c), (d), or (e) are present, and the felony involves any of the following:
 - 1. Causing serious physical injury to another person.
 - 2. Creating a serious danger to the personal safety of another person.
 - 3. Sexual assault.
 - 4. Theft, fraud or embezzlement.
 - 5. Criminal damage to property.
 - 6. Stalking or harassment.
- (b)** A substantial risk to the safety of members of the university community or others is posed.
- (c)** The university's ability, or the ability of the academic staff member's colleagues, to fulfill teaching, research or public service missions is seriously impaired.

- (d) The academic staff member's fitness or ability to fulfill the duties of their position is seriously impaired.
 - (e) The opportunity of students to learn, do research, or engage in public service is seriously impaired.
- (2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute serious criminal misconduct.
- (3) Except as otherwise expressly provided, an academic staff member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. ~~UWS 11.103 to 11.106.~~ UWS 11.30 to 11.33.
- (4) Any act required or permitted by ss. ~~UWS 11.103~~ UWS 11.30 to 11.106 ~~11.33~~ to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies forwarded to the Board of Regents under s. UWS 9.02.

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

UWS 11.30 Reporting responsibility. Any academic staff member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS 11.40229 (1) (a), in state or federal court, shall immediately report that fact to the chancellor.

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

UWS 11.31 Expedited process.

- (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. ~~UWS 11.40330~~ or other credible information that an academic staff member holding an indefinite appointment has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS 11.40229 (1) (a), in state or federal court, the chancellor shall:
- (a) Within 3 working days of receipt of the report or information, inform the academic staff member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and advise the chancellor as to whether to proceed under this section or ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26. 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.
 - (b) Upon appointing an investigator and notifying the academic staff member, afford the academic staff 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 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.

- (2) The investigator shall be complete and file a report with the chancellor not later than 10 working days following the investigator's appointment.
- (3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the academic staff member pursuant to ss. ~~UWS 11.101 to 11.106~~, UWS 11.28 to 11.33, to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10, to seek dismissal of the academic staff member pursuant to ss. UWS 11.13 to 11.26, to seek an alternative disciplinary sanction, or to discontinue the proceedings- as follows:
 - (a) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. ~~UWS 11.101~~UWS 11.28 to 11.106, 11.33, 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 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~~ UWS 11.30 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)~~ UWS 11.29 (1) (a), and one or more of the factors listed in s. UWS 11.29 (1) (b) through (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this section.
 - (c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 13 or ss. UWS 11.13 to 11.26, and implementing institutional policies, shall be followed.
- (4) If charges seeking dismissal are filed under sub. (3) (a), the academic staff member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 11.03. The hearing shall provide the procedural guarantees enumerated under ss. UWS 11.05 to 11.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.

- (5) Within 3 working days of receipt of the findings and recommendation of the committee under sub. (4), the chancellor shall prepare a written decision on the matter. In the decision, the chancellor may order dismissal of the staff member, may impose a lesser disciplinary action, or may find in favor of the staff member. The staff member shall be notified of the chancellor's decision in writing. If the university knows the identity 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.
- (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~~UWS 11.29.
- (7) The chair of the academic staff hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

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

UWS 11.32 Temporary suspension from duties without pay.

- (1) The chancellor, after consulting with appropriate academic staff governance representatives, may suspend an academic staff member holding an indefinite appointment from duties without pay pending the final decision as to dismissal where:
- (a) The academic staff member has been charged with a felony of a type listed in s. ~~UWS 11.102 (1) (a)~~UWS 11.29 (1) (a) and the chancellor, after following the provisions of s. ~~UWS 11.104 (1)~~UWS 11.31 (1) through (3), finds, in addition, that there is a substantial likelihood 1) that one or more of the conditions listed in s. ~~UWS 11.102 (1) (b)~~UWS 11.29 (1) (b) through (e) are present, and 2) that the academic staff member has engaged in the conduct as alleged; or
- (b) The academic staff member is unable to report for work due to incarceration, conditions of bail or similar cause; or
- (c) The academic staff member has pleaded guilty or no contest to or been convicted of a felony of the type listed in s. ~~UWS 11.102 (1) (a) and one or more of the conditions in s. UWS 11.102 (1) (b)~~UWS 11.29 (1) (a) and one or more of the conditions in s. UWS 11.29 (1) (b) through (e) are present.

- (2) If the chancellor finds that the conditions in sub. (1) are present, he or she shall immediately notify the academic staff member, in writing, of the intent to impose a suspension without pay, and shall, within 2 working days, provide the academic staff member with an opportunity to be heard with regard to the matter. The academic staff member may be represented by counsel or another at this meeting.
- (3) ~~(a)~~ If, after affording the academic staff member the opportunity to be heard, the chancellor determines to suspend without pay, the chancellor shall inform the academic staff member of the suspension, in writing. The chancellor's decision to suspend without pay under this section shall be final, except that:
- (ba) If the chancellor later determines that the academic staff member should not be dismissed the chancellor may discontinue the proceedings, or may impose a lesser penalty, and except as provided in par. (eb), shall order the payment of back pay for any period of the suspension for which the academic staff member was willing and able to report for work;
- ~~(e) If the chancellor later determines, under par. (a) or (b), (b)~~ If the chancellor later determines to recommend or impose as a lesser penalty the suspension of the academic staff member without pay, then any period of suspension without pay so recommended or ordered shall be offset by the period of any suspension without pay actually served by the academic staff member.
- (4) If, after affording the academic staff member the opportunity to be heard, the chancellor determines that the conditions in sub. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 11.08 shall apply.

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

UWS 11.33 Board review. A member of the academic staff on an indefinite appointment who has been dismissed for serious criminal misconduct may appeal this action to the board as provided in s. UWS 11.10. If the 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 academic staff member.

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

Chapter UWS 17
STUDENT NONACADEMIC DISCIPLINARY PROCEDURES

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

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

Subchapter I - General

UWS 17.01 Policy statement. The missions of the University of Wisconsin System and its individual institutions can be realized only if the university's teaching, learning, research, and service activities occur in living and learning environments that are safe and free from violence, harassment, fraud, theft, disruption and intimidation. In promoting such environments, the university has a responsibility to address student nonacademic misconduct; this responsibility is separate from and independent of any civil or criminal action resulting from a student's conduct. This chapter defines nonacademic misconduct, provides university procedures for effectively addressing misconduct, and offers educational responses to misconduct. The University of Wisconsin System is committed to respecting students' constitutional rights. Nothing in this chapter is intended to restrict students' constitutional rights, including rights of freedom of speech or to peaceably assemble with others.

UWS 17.02 Definitions. In this chapter:

(1) "Chief administrative officer" means the chancellor of an institution or ~~their~~the chancellor's designees.

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

(2m) "Complainant" means any individual who is alleged to be the subject of sexual misconduct, as defined in s. [UWS 17.46151](#).

~~(2g)~~**(2r)** "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in s. [UWS 17.46151](#). A person is unable to give consent if the person is ~~incapacitated~~in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

(3) "Days" means calendar days.

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

(a) Given personally.

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

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

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

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

(7) "Disciplinary sanction" means any action listed in s. [UWS 17.10085](#) (1) taken in response to student nonacademic misconduct.

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

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

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

(9) "Hearing examiner" means an individual, other than the investigating officer, appointed by the chief administrative officer in accordance with s. [UWS 17.06](#) (2) for the purpose of conducting a hearing under s. [UWS 17.12](#) or ~~[UWS 17.18](#)~~[153](#).

(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.

(10) "Institution" means any university, or an organizational equivalent designated by the board.

(11) "Investigating officer" means an individual, ~~or their designee~~, appointed by the chief administrative officer of each institution, or the individual's designee, 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~~[153](#).

(12m) "Party" refers to a respondent or complainant involved in a disciplinary procedure under Subchapter III.

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

(13m) "Respondent," means any student who was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred and has been reported to have violated UWS 17.09 or ~~UWS-17.16~~[151](#).

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

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

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

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

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

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

UWS 17.05 Designation of investigating officer. The chief administrative officer of each institution shall designate an investigating officer or officers for allegations of student nonacademic misconduct. The investigating officer shall investigate student nonacademic misconduct and initiate procedures for nonacademic misconduct under ss. [UWS 17.11](#) ~~or~~[and](#)

~~UWS 17.17.152.~~ For allegations involving sexual misconduct, as defined in s. UWS 17.~~16,151~~, the Title IX Coordinator or designee shall serve as the investigating officer.

UWS 17.06 Nonacademic misconduct hearing examiner.

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

(2) A hearing examiner shall be selected by the chief administrative officer pursuant to the policies adopted under sub. (1).

UWS 17.07 Nonacademic misconduct hearing committee.

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

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

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

(1) MISCONDUCT ON UNIVERSITY LANDS. Except as provided in s. UWS 17.08 (2), the provisions contained in this chapter shall apply to the student conduct described in ss. UWS 17.09 and ~~UWS 17.16-151~~ 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 17.16-151~~ that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer shall consider whether the conduct meets one or more of the following conditions:

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

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

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

UWS 17.085 Disciplinary sanctions.

(1) The disciplinary sanctions that may be imposed for nonacademic misconduct, in accordance with the procedures of ss. UWS 17.11 to 17.13, and 17.152 to 17.154 are any of the following:

- (a) A written reprimand.
- (b) Denial of specified university privileges.
- (c) Payment of restitution.
- (d) Educational or service sanctions, including community service.
- (e) Disciplinary probation.
- (f) Imposition of reasonable terms and conditions on continued student status.
- (g) Removal from a course in progress.
- (h) Enrollment restrictions on a course or program.
- (i) Suspension.
- (j) Expulsion.

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

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

Subchapter II - Procedures for Student Nonacademic Discipline in Non- Sexual Misconduct Cases

UWS 17.09 Conduct subject to disciplinary action under ss. UWS 17.11 to 17.15. 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~~151, may be consolidated with such charges and addressed with the sexual misconduct disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.~~17~~152 to 17.~~21~~156.

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

(~~24~~) HARASSMENT. Conduct defined in s. 947.013, Stats.

(~~35~~) HAZING. Conduct defined in s. 948.51, Stats.

(~~46~~) ILLEGAL USE, POSSESSION, MANUFACTURE, OR DISTRIBUTION OF ALCOHOL OR CONTROLLED SUBSTANCES. Use, possession, manufacture, or distribution of alcoholic beverages or of marijuana, narcotics, or other controlled substances, except as expressly permitted by law or university policy.

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

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

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

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

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

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

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

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

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

(1012) VIOLATION OF CRIMINAL LAW. Conduct that constitutes a criminal offense as defined by state or federal law.

(1113) SERIOUS AND REPEATED VIOLATIONS OF MUNICIPAL LAW. Serious and repeated off-campus violations of municipal law.

(1214) VIOLATION OF CH. UWS 18. Conduct that violates ch. [UWS 18](#), including, but not limited to, provisions regulating fire safety, theft, and dangerous weapons.

(1315) VIOLATION OF UNIVERSITY RULES. Conduct that violates any published university rules, regulations, or policies, including provisions contained in university contracts with students.

(1416) NONCOMPLIANCE WITH DISCIPLINARY SANCTIONS. Conduct that violates a sanction, requirement, or restriction imposed in connection with previous disciplinary action.

(1520) RETALIATION. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in ss. UWS

17.~~47~~152 to 17.~~24~~156, 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.~~47~~152 to 17.~~24~~156.

~~UWS 17.10 — Disciplinary sanctions.~~

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

- ~~(a) A written reprimand.~~
- ~~(b) Denial of specified university privileges.~~
- ~~(c) Payment of restitution.~~
- ~~(d) Educational or service sanctions, including community service.~~
- ~~(e) Disciplinary probation.~~
- ~~(f) Imposition of reasonable terms and conditions on continued student status.~~
- ~~(g) Removal from a course in progress.~~
- ~~(h) Enrollment restrictions on a course or program.~~
- ~~(i) Suspension.~~
- ~~(j) Expulsion.~~

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

~~(3) Disciplinary sanctions shall not include the termination or revocation of student financial aid; however, this shall not be interpreted as precluding the individual operation of rules or standards governing eligibility for student financial aid under which the imposition of a disciplinary sanction could result in disqualification of a student for financial aid.~~ **UWS 17.11 Disciplinary procedure.**

(1) PROCESS. The investigating officer may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.~~40~~085 (1) for conduct defined in s. UWS 17.09.

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

(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 shall be considered resolved without the necessity for further action. The investigating officer shall notify the respondent.

(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 17.10085 (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.
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 to the respondent.

(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 17.10085 (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 17.10085 (1) (h) to (j), the investigating officer shall forward a copy of the written report under par. (b) to the student affairs officer. The student affairs officer shall, upon receipt of the written report, proceed under s. UWS 17.12 to schedule a hearing on the matter. A hearing shall be conducted unless the respondent waives, in writing, the right to such a hearing.

UWS 17.12 Hearing.

(1) A respondent who requests a hearing, or for whom a hearing is scheduled under s. UWS 17.11 (4) (c) 2., for conduct defined in s. UWS 17.09, shall have the right to decide whether the matter shall be heard by a hearing examiner or a hearing committee.

(2) If a respondent requests a hearing under s. UWS 17.11 (4) (c) 1., or a hearing is required to be scheduled under s. UWS 17.11 (4) (c) 2., the student affairs officer shall take the necessary

steps to convene the hearing and shall schedule it within 15 days of receipt of the request or written report. The hearing shall be conducted within 45 days of receipt of the request or written report, unless a different time period is mutually agreed upon by the respondent and investigating officer or is ordered or permitted by the hearing examiner or committee.

(3) No less than 5 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, a full explanation of the facts upon which the determination of misconduct was based, and shall provide the respondent with access to or copies of the investigating officer's explanation, together with any other materials provided to the hearing examiner or committee by the investigating officer, including any additional available information of the type described in s. UWS 17.11 (4) (a) 2.

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

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

(b) The respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on ~~their~~the respondent's 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 17.40085 (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 17.40085 (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 ~~their~~the respondent's own behalf to questions asked of ~~them~~the respondent during the hearing.

(c) The hearing examiner or committee:

1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.
2. Shall 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 respondent 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 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 17.40085 \(1\) \(h\) to \(j\)](#).

2. A preponderance of the evidence, when the sanction to be imposed is one of those listed in s. [UWS 17.40085 \(1\) \(a\) to \(g\)](#).

(g) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. [UWS 17.40085 \(1\) \(a\) to \(g\)](#) that differs from the recommendation of the investigating officer. Sanctions under s. [UWS 17.40085 \(1\) \(h\) 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~~ [the investigating officer's](#) 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 ~~s. 19.85, Wis. Stats., the~~ [Wisconsin Open Meetings of Governmental Bodies 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.

UWS 17.13 Appeal to the chancellor.

(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 17.40085 \(1\) \(h\) 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.

(23) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:

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

(b) Appropriate procedures were not followed which resulted in material prejudice to the respondent.

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

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

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 ~~any~~ the respondent within 14 days of the final institutional decision.

UWS 17.15 Settlement. For conduct defined in s. UWS 17.09, 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.

Subchapter III - Procedures for Student Nonacademic Discipline in Sexual Misconduct Cases

UWS 17.16151 Sexual ~~Misconduct~~ misconduct subject to disciplinary action under ss. UWS 17.17152 to 17.24.157. 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. Sexual misconduct, as defined in ~~s. UWS 17.16~~ this section, shall use the disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.17152 to 17.24.157.

(1) SEXUAL HARASSMENT. Conduct on the basis of sex that satisfies any of the following:

- (a) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.
- (b) Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal “reasonable person” standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an university sponsored or supported activity.

(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).~~ An offense that meets any of the following definitions:

- (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 as per s. 944.06, Stats.
- (d) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent as per 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 as per ss. 813.12(1)(am) and 968.075, Stats.

(5) STALKING. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

(6) SEXUAL EXPLOITATION. ~~Occurs when an individual attempts, takes~~ Attempting, taking, or ~~threatens~~ threatening to take, nonconsensual sexual advantage of another person. Examples include:

(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 complainants.

2. Allowing another person to observe, record, or photograph sexual activity or private body parts of one or more complainants.
 3. Otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of one or more complainants.
- (b) Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing another person to do the same.
 - (c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.
 - (d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.
 - (e) Coercing the complainant to engage in sexual activity for money or anything of value.
 - (f) Threatening distribution of any of the following, to coerce the complainant into sexual activity or providing money or anything of value:
 1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more complainants.
 2. Other information of a sexual nature, including sexual history or sexual orientation.

UWS 17.~~17~~152 Sexual misconduct 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.~~17~~085 \(1\)](#), for sexual misconduct defined in s. [UWS 17.~~17~~151](#). Conduct described in s. [UWS 17.09](#) may be consolidated with sexual misconduct charges pursuant to this section and consistent with s. [UWS 17.08](#). When responding to sexual misconduct, the university may take the following actions:

(a) The university may consolidate disciplinary procedures as to allegations of sexual misconduct, as defined in s. [UWS 17.~~17~~151](#), 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.

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

(2) TITLE IX MISCONDUCT. ~~As required by 34 CFR Part 106, either Either~~ a complainant or the Title IX Coordinator may file a formal Title IX complaint as defined in [s. UWS 17.02\(8m\)-](#). Unless ~~a the~~ formal Title IX complaint is dismissed under subsection 2(~~ba~~) or 2(~~e~~), ~~b~~), sexual misconduct under this section shall also be considered "Title IX misconduct" and require associated process. Dismissals will be handled as follows:

(a) The university shall dismiss a formal Title IX complaint that does not meet all of the following requirements:

1. The alleged conduct is on the basis of sex and meets the definitions of sexual harassment, as defined in s. UWS 17.~~46151~~(1)(a), or sexual assault, dating violence, domestic violence, or stalking, as defined in s. UWS 17.~~46151~~ (2) to (4), and (6).~~5).~~
2. The alleged conduct occurred within a university “education program or activity,” as defined in s. UWS 17.02(7m).
3. The alleged conduct occurred against the complainant while in the United States.
4. The complainant is participating in or attempting to participate in the university’s education program or activity at the time ~~they file~~ the complaint is filed.

(b) The university may dismiss a formal 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 formal Title IX complaint or any allegations therein.
2. The respondent is no longer enrolled ~~by~~in the university.
3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal Title IX complaint or allegations therein.

(c) Upon dismissal of a formal Title IX complaint, the university shall promptly send written notice of the dismissal and reason therefore simultaneously to the complainant and respondent. The complainant and respondent have the right to appeal the dismissal of a formal Title IX complaint under s. UWS 17.~~49154~~(1).

(d) Dismissal of a formal Title IX complaint does not preclude other university action under ch. UWS 17.

(3) 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~~The details known at the time of issuing notice, including:

1. The identities of the complainant and respondent involved in the incident, if known.
2. The conduct allegedly constituting sexual misconduct.
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), that making a knowingly~~ false statement or ~~refusal/refusing~~ to comply regarding a university matter ~~- may violate s. UWS 17.09(11) and could result in additional sanctions.~~

(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 allegations also involves Title IX misconduct.

(g) Information about the nonacademic misconduct process available in ~~eh. UWS 17~~ this chapter 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.

(4) INVESTIGATION. During the investigation, the investigating officer shall do all of the following:

(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; the university may, 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 anyone whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the person to prepare to participate.

(e) Not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a grievance process under this section.

(5) REVIEW OF EVIDENCE. Prior to completion of the final investigative report as described in s. UWS 17. ~~17(5), 152(6),~~ the university shall provide the following to the complainant and respondent and their advisors, if any:

(a) 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, regardless of~~ whether obtained from a party or other source, so

that each party can meaningfully respond to the evidence prior to conclusion of the investigation. This shall include information upon which the university does not intend to rely in reaching a determination regarding responsibility as well as any inculpatory or exculpatory evidence.

~~(b) The complainant and respondent shall have~~(b) 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.

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

~~(a) The final investigative report may contain recommended determinations as to whether sexual misconduct occurred and specification of any sanction recommended.~~ 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. Upon distribution of the final investigative report to the complainant and respondent, the following conditions shall apply:

~~(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, (a)~~ The complainant and respondent have the right to a hearing under s. UWS 17.~~48~~153 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,~~
(b) The university shall proceed under s. UWS 17.~~48~~153 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.~~24~~156.

UWS 17.~~48~~—153 Sexual misconduct hearing.

(1) The university shall have the right to decide whether a hearing examiner or hearing committee shall hear the matter.

(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.~~47~~152(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 b. 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)152(4)(e).

4. May take reasonable steps to maintain order; and ~~to~~ adopt procedures for the questioning of ~~a witness~~parties or witnesses appropriate to the circumstances of ~~that witness's~~the testimony, provided, ~~however, whatever procedure is adopted,~~ the advisors for the complainant and respondent are allowed to effectively ~~question~~the cross-examine any party or witness.

(5) The party's advisors shall conduct cross-examination directly, orally, and in real time. A party may not personally conduct cross-examination. The following conditions shall apply:

(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 Title IX misconduct, if a party or a witness does not submit to cross-examination at the hearing, 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)(~~iv~~-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 ch. UWS 17 to the facts.

(e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility under this subchapter, including any Title IX misconduct, any disciplinary sanctions the university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the university's education program or activity shall 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).~~

(f) One or more of the disciplinary sanctions listed in s. UWS 17.085 (1), if imposed by the hearing examiner or committee.

(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. If an appeal is filed, the decision regarding responsibility becomes final on the date the university provides the complainant and respondent with the written determination of the result of the appeal. If no appeal is filed, the decision regarding responsibility becomes final once the last date to appeal passes.

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

UWS 17.~~19~~154 Appeal to the chancellor for 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 formal 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.

UWS 17.~~20~~155 Discretionary appeal to the Board of Regents. for sexual misconduct. University decisions under ss. UWS 17.~~47~~152 to 17.~~49~~154 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:

(1) Notify the other party in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

(2) Issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent.

UWS 17.~~24~~156 Settlement for sexual misconduct.

(1) The procedures set forth in this chapter allow the university, the respondent, and the complainant to voluntarily enter into a settlement agreement or informal resolution regarding the alleged misconduct, any time after the notice of investigation has been distributed 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 the complainant, the respondent, and the Title IX Coordinator or designee except in any of the following circumstances:

(a) There is no identified complainant.

(b) The complainant has chosen not to participate in proceedings pursuant to this subchapter.

(c) The complainant has withdrawn the formal Title IX complaint.

(2) In the circumstances described in subsection sub. (1), the agreement and its terms may be signed by only the respondent and the Title IX Coordinator or designee. The case is concluded when a copy of the signed agreement is delivered to the complainant, if any, and respondent. At any time prior to agreeing to a resolution, either party has the right to withdraw from the settlement process and resume the process under s. UWS 17.152 to 17.20.155.

Subchapter IV – Effect of Discipline, Petition for Restoration, and Emergency Suspension

UWS 17.~~22~~16 Effect of discipline within the institution. A respondent who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS 17.~~100~~85 (1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11 or ~~UWS 17.17~~152 shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

UWS 17.~~23~~17 Effect of suspension or expulsion within the university system.

(1) Suspension or expulsion shall be systemwide in effect and shall be noted on an individual's transcript, with suspension noted only for the duration of the suspension period.

(2) An individual who is suspended from one institution in the University of Wisconsin System may not enroll in another institution in the system until the suspension has expired by its own terms, except as provided in s. UWS 17.~~24~~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 17.2418.

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

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

UWS 17.2418 Petition for restoration of rights after suspension or expulsion. A respondent who has been suspended may petition to have ~~their~~the respondent's student status, rights, and privileges restored before the suspension has expired by its own terms under s. UWS 17.2317 (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, ~~if applying to of~~ if applying to of a different University of Wisconsin institution, ~~is seeking to which the respondent seeks~~ admission. The chief administrative officer shall make the readmission decision. In cases of sexual misconduct, the readmission decision shall be made in consultation with the Title IX Coordinator and reasonable attempts shall be made to notify the complainant ~~shall be notified~~ of any change to the disciplinary outcome, ~~and the complainant,~~. If enrolled as a student at the time of the petition, the complainant shall be provided opportunity to respond ~~regarding any review of responsibility findings to the petition prior to the readmission decision.~~

UWS 17.2519 Emergency suspension.

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

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

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

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

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

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

2. Would constitute a potential for serious harm to others.

3. Would pose a threat of serious disruption of university-run or university-authorized activities.

4. Would constitute a potential for serious damage to university facilities or property.

(d) In cases of sexual misconduct, as defined in s. UWS 17.~~46~~151, the chief administrative officer has made reasonable attempts to consult with the complainant and offer protective measures.

(3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the respondent. In cases of sexual misconduct, as defined in s. UWS 17.~~46~~151, the written notification of the emergency suspension shall be delivered simultaneously to the complainant and the respondent. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the respondent and is final.

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

(5) An emergency suspension imposed in accordance with this section shall be in effect until the decision in the hearing on the underlying charges pursuant to s. UWS 17.12 or 17.~~48~~153 is rendered or the chief administrative officer rescinds the emergency suspension. In no case shall an emergency suspension remain in effect for longer than 30 days, unless the respondent agrees to a longer period.

(6) If the chief administrative officer determines that none of the conditions specified in sub. (2) (c) are present, but that misconduct may have occurred, the case shall proceed in accordance with s. UWS 17.12 or ~~UWS~~ 17.~~48~~153, as applicable.

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

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM	ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING PERMANENT RULES
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The statement 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.

ORDER

An order of the Board of Regents of the University of Wisconsin System to repeal UWS 4.015(8); amend UWS 4 (title), UWS 4.01(1), 4.015(5) and (6) and (11), 4.02(1) and (3), 4.05(1)(c) and (1)(e) and (1)(g), 4.06(1)(am) and (1)(c) and (1)(d) and (1)(g), 4.07(1) and (2), 4.08(1) and (4), and 4.09; repeal and recreate 4.015(intro.) and (2) and (3) and (4) and (9) and (10); and create Subchapter I, UWS 4.01(3), 4.015 (6m), Subchapter II, 4.016, and Subchapter III., relating to addressing allegations of sexual misconduct against faculty of the University of Wisconsin System.

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

ANALYSIS

Statutes interpreted: s. [36.09 \(1\)\(a\)](#), Stats.

Statutory authority: s. [36.09 \(1\)\(a\)](#), 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.”

Related statute or rule: N/A

Plain language analysis:

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

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 sexual harassment and hostile environment consisting of unwelcome conduct that a reasonable person would determine is 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 must 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 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 if a complainant wishes to withdraw the complaint. A university may still address these dismissed complaints under other code of conduct provisions. 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 provides the chancellor with a written report that may include recommended sanctions against the respondent, the chancellor, if appropriate, files dismissal charges against the faculty member and the faculty member is entitled to a hearing before a faculty committee. 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 provides a faculty member facing charges of dismissal related to allegations of sexual misconduct with the right to a hearing before a faculty committee. 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, if a party does not have an advisor, 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 or hearing committee 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 or other informal guidance 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 or other informal guidance. 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 federal funding. All universities that receive federal funding are required to revise policies and procedures to comply with the federal regulations.

Illinois

[110 Ill. Comp. Stat. § 155](#) requires all higher education institutions in the state to “adopt a comprehensive policy concerning sexual violence, domestic violence, dating violence, and stalking consistent with governing federal and State law. The specific policy changes to comply with the new federal regulations were implemented at the university or university system level. For example, see [§ 1-111](#) of the University of Illinois Student Code and [Sexual Misconduct policy](#) of the University of Illinois Campus Administrative Manual.

Iowa

[2.1\(4\)\(M\)\(i\)](#) of the Board of Regents Policy Manual requires all regent institutions in the state to implement policies to address sexual harassment. The specific policy changes to comply with the new federal regulations were implemented at the university level. For example, see [Interim Policy on Sexual Harassment and Sexual Misconduct](#) in the University of Iowa Operations Manual.

Michigan

Michigan has implemented the policy changes to comply with the new federal regulations at the university system or university level. For example, see [The University of Michigan Interim Policy on Sexual and Gender-Based Misconduct](#).

Minnesota

Minn. Stat. § 135A.15 requires all higher education institutions in the state to implement sexual harassment policies. The specific policy changes to comply with the new federal regulations were implemented at the university level. For example, see [Sexual Harassment, Sexual Assault, Stalking and Relationship Violence](#) and [Conflict Resolution](#)

[for Faculty, P&A, Civil Service, and Student Workers](#) in the University of Minnesota Administrative Policies.

Summary of factual data and analytical methodologies:

Consulting with UW System and UW System institutions to determine how many Title IX cases are anticipated for this year, as well as the cost of advisors and hearing officers.

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

UW System posted its Economic Impact Analysis and Fiscal Estimate on its website to make it available for comment. UW System also informed the UW System institutions that it had posted these documents. The documents remained posted on the website for 14 days from October 12, 2020 through October 26, 2020. No comments on the economic impact or fiscal estimate were received.

Fiscal Estimate:

See attached Economic Impact Analysis and Fiscal Estimate.

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:

Sarah Harebo
Title IX and Clery Administrator
University of Wisconsin System Administration
1848 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706;
Telephone 608-262-6497;
email address: sharebo@uwsa.edu.

Public Comments:

The Board of Regents held a public hearing on November 30, 2020 preceded by a public comment period related to the proposed rule. 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; (2) by email to compliance@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.

TEXT OF RULE

Section 1. Chapter UWS 4(title) is amended to read:

UWS 4
PROCEDURES FOR FACULTY DISMISSAL AND FOR DISMISSAL AND
DISCIPLINE IN TITLE IX CASES

**Section 2. Subchapter I – General of Chapter UWS 4 [precedes UWS 4.01] is
created to read:**

UWS 4
SUBCHAPTER I
GENERAL

Section 3. 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 4. 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 4.11, shall be governed by ss. UWS 4.11 to UWS 4.24.

Section 5. UWS 4.015(intro.), (2), (3), and (4) are repealed and recreated to read:

UWS 4.015 Definitions. In this chapter:

(2) "Complaint" means an allegation against a faculty member reported to an appropriate university official.

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

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

Section 6. UWS 4.015(5) and (6) are amended to read:

(5) "Dating violence" means violence committed by ~~an employee against another person with whom they are in a "dating relationship" as defined in s. 813.12 (1) (ag), Stats.~~ 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, the frequency of interaction between the persons involved in the relationship.

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

Section 7. UWS 4.015(6m) created to read:

(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.

Section 8. UWS 4.015(8) is repealed.

Section 9. UWS 4.015(9) and (10) are repealed and recreated to read:

- (9) "Sexual assault" means an offense that meets any of the following definitions:
- (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 the complainant's age or because of the complainant's 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.

(10) "Sexual exploitation" means attempting, taking or threatening to take, nonconsensual sexual advantage of another person. Examples include:

(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 activity.

(d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.

(e) Coercing the complainant to engage in sexual activity for money or anything of value.

(f) Threatening distribution of 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 9. UWS 4.015(11) is amended to read:

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

Section 10. Subchapter II – Procedures for Faculty Dismissal and Discipline in Non-Title IX Cases of Chapter UWS 4 [precedes UWS 4.016] is created to read:

UWS 4

SUBCHAPTER II
PROCEDURES FOR FACULTY DISMISSAL AND DISCIPLINE IN NON-TITLE IX
CASES

Section 11. UWS 4.016 is created to read:

UWS 4.016 Subchapter II Definitions. In this subchapter:

(1) “Complainant” means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation as defined in this section.

(2) “Sexual harassment” means conduct on the basis of sex that satisfies any of the following:

(a) *Quid pro quo sexual harassment.*

1. 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; or
2. An employee of the institution either, explicitly or implicitly, conditions the provision of an academic, professional, or employment-related opportunity, aid, benefit, or service on an individual’s participation in unwelcome sexual conduct

(b) *Hostile environment sexual harassment.*

1. Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity; or
2. Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal “reasonable person” standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in an university sponsored or supported activity.

Section 12. UWS 4.02(1) and (3) is amended to read:

- (1) Whenever the chancellor of an institution within the University of Wisconsin system receives a complaint against a faculty member which ~~he or she~~ the chancellor deems substantial and which, if true, might lead to dismissal under s. UWS 4.01, the chancellor, or designee, shall within a reasonable time initiate an investigation and shall, prior to reaching a decision on filing charges, offer to discuss the matter informally with the faculty member. For complaints of sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the chancellor, or designee, shall appoint the Title IX Coordinator, or designee, to initiate an investigation in accordance with applicable policies. The chancellor, or designee, shall also offer to discuss the matter informally with the complainant, and

provide information regarding rights under this chapter. Both the faculty member and the complainant shall have the right to be accompanied by an advisor of their choice at any meeting or proceeding that is part of the institutional disciplinary process. A faculty member may be dismissed only after receipt of a written statement of specific charges from the chancellor as the chief administrative officer of the institution and, if a hearing is requested by the faculty member, in accordance with the provisions of this chapter. If the faculty member does not request a hearing, action shall proceed along normal administrative lines but the provisions of ss. [UWS 4.02](#), [4.09](#), and [4.10](#) shall still apply.

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

Section 13. UWS 4.05(1)(c), (1)(e), and (1)(g) are amended to read:

- (c) A right to be heard in ~~his/her~~ the faculty member's defense;
- (e) A right to confront and cross-examine adverse witnesses. If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, ~~or sexual exploitation~~, sexual exploitation, or stalking, the hearing committee may reasonably restrict the faculty member or the complainant from questioning each other;

Section 14. UWS 4.06(1)(am), (1)(c), (1)(d), and (1)(g) are amended to read:

- (am) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the standard of proof shall be a preponderance of the evidence;
- (c) The hearing shall be closed unless the faculty member under charges requests an open hearing, in which case it shall be open (see subch. [V](#) of ch. 19, Stats., ~~Open Meeting Law~~ Meetings of Governmental Bodies);
- (d) The faculty hearing committee may, on motion of either party, and, if the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, on the motion of the complainant, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to

the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under s. [UWS 4.03](#);

- (g) If a proceeding on charges against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, ~~he/she~~ the faculty member may elect that such proceeding be carried to a final decision. Unless ~~he/she~~ the faculty member so elects in writing, the proceeding shall be discontinued at the expiration of the appointment;

Section 15. 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 ~~his/her~~ the 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 16. UWS 4.08(1) and (4) amended to read:

- (1) If the chancellor recommends dismissal, the board shall review the record before the faculty hearing committee and provide an opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, unless the board decides to drop the charges against the faculty member without a hearing or the faculty member elects to waive a hearing. This hearing shall be closed unless the faculty member requests an open hearing (see subch. [V of ch. 19](#), Stats., ~~Open Meetings of Governmental Bodies Meeting Law~~). For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have the same opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, as the faculty member.
- (4) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the faculty member and complainant shall be simultaneously notified of the board's final decision.

Section 17. 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~~ the faculty member's 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 18. Subchapter III – Procedures for Faculty Dismissal in Title IX Cases created to read:

UWS 4
SUBCHAPTER II
PROCEDURES FOR FACULTY DISMISSAL IN TITLE IX CASES

UWS 4.11 Subchapter III Definitions. In this subchapter:

- (1) "Complainant" means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.
- (2) "Education program or activity" means, for purposes of Title IX misconduct only, locations, events, or circumstances at which the university exercised substantial control over both the faculty member and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

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

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

(5) “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 provisions 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 toward a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, 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.

(6) “Title IX misconduct” means sexual assault, stalking, dating violence, or domestic violence as defined in this chapter and sexual harassment as defined in sub. (5).

UWS 4.12 Dismissal for cause or lesser discipline for Title IX misconduct.

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

(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.

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

- (1) There is a formal Title IX complaint alleging Title IX misconduct on the basis of sex.
- (2) The conduct occurred in the United States.
- (3) The conduct occurred within a university's education program or activity.
- (4) The complainant must be participating in or attempting to participate in the education program or activity of the university at the time of filing the complaint.
- (5) The complainant or Title IX coordinator has submitted a formal Title IX complaint.

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

(1) The university shall dismiss a formal Title IX complaint consisting of allegations that meet any of the following conditions:

- (a) The alleged conduct would not constitute Title IX misconduct if proved.
- (b) The alleged conduct did not occur in a university program or activity.
- (c) The alleged conduct did not involve actions against someone physically located in the United States.

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

- (a) The complainant formally requests in writing to withdraw the formal Title IX 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 Title IX complaint.

(3) The university generally shall decide whether to dismiss a formal Title IX 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) The dismissal of a formal Title IX complaint does not preclude the university from otherwise pursuing discipline against the faculty member under other administrative rules or university policies.

UWS 4.15 Investigation of Title IX misconduct allegations.

(1) Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.

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

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.

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, the complainant, and their advisors, if any, for their review and response at least 10 days prior to a hearing. The written report shall be delivered simultaneously to the faculty member and complainant. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless both the faculty member and the complainant waive, in writing, the right to such a hearing.

UWS 4.18 Standing faculty committee and hearing examiner.

(1) The chancellor of each university, in consultation with faculty representatives, shall adopt policies providing for the designation of a Title IX conduct hearing examiner. The chancellor shall select a hearing examiner 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 a hearing examiner or a hearing committee will hear the matter.

(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.

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. The faculty member's or complainant's advisor shall conduct cross examination directly,

orally, and in real time. 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 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).

UWS 4.20 Procedural guarantees.

- (1) Any hearing held shall comply with the requirements set forth in s. UWS 4.19. 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 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 Title IX 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 Title IX 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.

Note: See subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies..

(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 the need for any of the following:

1. 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.

UWS 4.21 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 faculty member concerned, within 30 days after the conclusion of the hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations.

UWS 4.22 Chancellor's decision.

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

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

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

UWS 4.23 Appeal to board.

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

Note: See subch. [V of ch. 19](#), Stats., Open Meetings of Governmental Bodies..

(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) Conflict of interest or bias for or against the faculty member or complainant, or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that affected the outcome.

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

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

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

UWS 4.24 Suspension from duties. Pending the final decision on dismissal or other discipline, the faculty member 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 19. Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

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

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM	ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING PERMANENT RULES
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The statement 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.

ORDER

An order of the Board of Regents of the University of Wisconsin System to amend UWS 7(title), UWS 7.01, 7.02(1)(d), 7.03(1), 7.05(1)(a) and (1)(b) and (3)(intro.) and (3)(c) and (6) and (8), and 7.06(1)(intro.); and repeal and recreate 7.015(2) and 7.05(5), relating to addressing allegations of sexual misconduct against faculty of the University of Wisconsin System.

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

ANALYSIS

Statutes interpreted: s. [36.09 \(1\)\(a\)](#), Stats.

Statutory authority: s. [36.09 \(1\)\(a\)](#), 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.”

Related statute or rule: N/A

Plain language analysis:

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

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 sexual harassment and hostile environment sexual harassment consisting of unwelcome conduct that a reasonable person would determine is 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 must 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 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 if a complainant wishes to withdraw the complaint. A university may still address these dismissed complaints under other code of conduct provisions. 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 provides the chancellor with a written report that may include recommended sanctions against the respondent, the chancellor, if appropriate, files dismissal charges against the faculty member and the faculty member is entitled to a hearing before a faculty committee. 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 provides a faculty member facing charges of dismissal related to allegations of sexual misconduct with the right to a hearing before a faculty committee. 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, if a party does not have an advisor, 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 or hearing committee 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 or other informal guidance 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 or other informal guidance. 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 federal funding. All universities that receive federal funding are required to revise policies and procedures to comply with the federal regulations.

Summary of factual data and analytical methodologies:

Consulting with UW System and UW System institutions to determine how many Title IX cases are anticipated for this year, as well as the cost of advisors and hearing officers.

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

UW System posted its Economic Impact Analysis and Fiscal Estimate on its website to make it available for comment. UW System also informed the UW System institutions that it had posted these documents. The documents remained posted on the website for 14 days from October 12, 2020 through October 26, 2020. No comments on the economic impact or fiscal estimate were received.

Fiscal Estimate:

See attached Economic Impact Analysis and Fiscal Estimate.

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:

Sarah Harebo
Title IX and Clery Administrator
University of Wisconsin System Administration
1848 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706;
Telephone 608-262-6497;
email address: sharebo@uwsa.edu.

Public Comments:

The Board of Regents held a public hearing on November 30, 2020 preceded by a public comment period related to the proposed rule. 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; (2) by email to compliance@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.

TEXT OF RULE

Section 1. Chapter UWS 7(title) is amended to read:

UWS 4

PROCEDURES FOR FACULTY DISMISSAL OF FACULTY IN SPECIAL CASES

Section 2. 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 ~~his or her~~ the faculty member's 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 7.015(2) is repealed and recreated to read:

(2) "Affected party" means any student, employee, visitor, or an individual participating in a university program or activity, who is a victim of a faculty member's serious criminal misconduct.

Section 3. UWS 7.02(1)(d) is amended to read:

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

Section 4. 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 ~~his or her~~ the term of

appointment only by the board and only for just cause and only after due notice and hearing.

Section 5. UWS 7.05(1)(a), (1)(b), and (3)(intro.) and (c) are amended to read:

(1)

(a) Within 3 working days of receipt of the report or information, inform the faculty member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and to advise the chancellor as to whether to proceed under this section or ch. UWS 4. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the affected party complainant shall be notified by the chancellor of the receipt report or information at the same time as the faculty member.~~ 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.

(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).~~ as follows:

(c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ~~ch.~~ chs. UWS 4 and 6, and implementing institutional policies, shall be followed.

Section 6. UWS 7.05(5) is repealed and recreated to read:

(5) Within 3 working days of receipt of the findings and recommendation of the committee under sub. [\(4\)](#), the chancellor shall prepare a written recommendation on the matter as follows:

(a) If the recommendation is for dismissal, the chancellor shall transmit it to the board for review.

(b) 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. If the identity of an affected party is known to the university, the university shall make a reasonable attempt to provide the affected party a copy of the chancellor's final decision at the same time as the faculty member.

Section 7. UWS 7.05(6) and (8) are amended to read:

(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 8. UWS 7.06(1)(intro.) is amended to read:

(1) The chancellor, after consulting with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to ~~his or her~~ the faculty member's dismissal where:

Section 9. Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

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

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM	ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING EMERGENCY RULES
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The statement 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.

ORDER

An order of the Board of Regents of the University of Wisconsin System to repeal UWS 11.015(2) and (8); amend UWS 11(title), UWS 11.01(1) and (3), 11.02(1) and (2), UWS 11.05(1) and (2), 11.06(1) and (2), 11.07, 11.08, 11.10, 11.11, 11.12, 11.29(1), 11.31(1) and (3) and (5) and (6), 11.32(1), and 11.33; repeal and recreate 11.015(intro.) and (5) and (6) and (9) and (10) and (11); renumber 11.101, 11.102, 11.103, 11.104, 11.105, and 11.106 to 11.28, 11.29, 11.30, 11.31, 11.32, and 11.33 respectively; and create Subchapter I, UWS 11.01(4), 11.015(6m), Subchapter II, 11.016, 11.102(5), Subchapter III, and Subchapter IV, relating to addressing allegations of sexual misconduct against academic staff of the University of Wisconsin System.

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

ANALYSIS

Statutes interpreted: ss. [36.09 \(1\)\(a\)](#) and [36.15 \(3\)](#), Stats.

Statutory authority: ss. [36.09 \(1\)\(a\)](#) and [36.15 \(3\)](#), 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. [36.15 \(3\)](#), Stats.: “A person having an academic staff appointment for a term may be dismissed prior to the end of the appointment term only for just cause and only after due notice and hearing. . . . The board shall develop procedures for notice and hearing which shall be promulgated as rules under ch.227.”

Related statute or rule: N/A

Plain language analysis:

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

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 sexual harassment and hostile environment sexual harassment consisting of unwelcome conduct that a reasonable person would determine is 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 must 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 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 if a complainant wishes to withdraw the complaint. A university may still address these dismissed complaints under other code of conduct provisions. 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 provides the chancellor with a written report that may include recommended sanctions against the academic staff member, the chancellor, if appropriate, files dismissal charges against the academic staff member and the academic staff member is entitled to a hearing before an academic staff committee.. 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 provides an academic staff member facing charges of dismissal related to allegations of sexual misconduct with the right to a hearing before an academic staff committee. 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, if a party does not have an advisor, 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 or hearing committee 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 or other informal guidance 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 or other informal guidance. 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 federal funding. All universities that receive federal funding are required to revise policies and procedures to comply with the federal regulations.

Summary of factual data and analytical methodologies:

Consulting with UW System and UW System institutions to determine how many Title IX cases are anticipated for this year, as well as the cost of advisors and hearing officers.

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

UW System posted its Economic Impact Analysis and Fiscal Estimate on its website to make it available for comment. UW System also informed the UW System institutions that it had posted these documents. The documents remained posted on the website for 14 days from October 12, 2020 through October 26, 2020. No comments on the economic impact or fiscal estimate were received.

Fiscal Estimate:

See attached Economic Impact Analysis and Fiscal Estimate.

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:

Sarah Harebo

Title IX and Clery Administrator

University of Wisconsin System Administration

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Telephone 608-262-6497;

email address: sharebo@uwsa.edu.

Public Comments:

The Board of Regents held a public hearing on November 30, 2020 preceded by a public comment period related to the proposed rule. 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; (2) by email to compliance@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.

TEXT OF RULE

Section 1. Chapter UWS 11 (title) is amended to read:

UWS 11

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

Section 2. Subchapter I – General of Chapter UWS 11 [precedes UWS 11.01] is created to read:

UWS 11

SUBCHAPTER I

GENERAL

Section 3. UWS 11.01(1) and (3) is amended to read:

(1) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under ss. [UWS 11.02](#) through ~~11.106~~ [11.10](#) and [11.29](#) through [11.33](#) or for reasons of budget or program under ch. [UWS 12](#).

(3) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. UWS ~~11.102~~ [11.29](#).

Section 4. 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 11.13, shall be governed by ss. UWS 11.13 to UWS 11.26.

Section 5. UWS 11.015 (intro.) is repealed and recreated to read:

UWS 11.015 Definitions. In this chapter:

Section 6. UWS 11.015(2) is repealed.

Section 7. UWS 11.015(3m) is 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 the definitions of sexual assault and sexual exploitation in this section. A person is unable to give consent if the person is in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

Section 8. UWS 11.015(5) and (6) are repealed and recreated to read:

(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 as per ss. 813.12(1)(am) and 968.075, Stats.

Section 9. UWS 11.015(6m) is created to read:

(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.

Section 10. UWS 11.015(8) is repealed.

Section 11. UWS 11.015(9), (10), and (11) are repealed and recreated to read:

(9) “Sexual assault” means an offense that meets any of the following definitions:

- (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 the complainant’s age or because of the complainant’s 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.

(10) “Sexual exploitation” means attempting, taking or threatening to take, nonconsensual sexual advantage of another person. Examples include:

- (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 activity.
- (d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.
- (e) Coercing the complainant to engage in sexual activity for money or anything of value.

(f) Threatening distribution of 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.

(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 12. Subchapter II – Procedures for Academic Staff Dismissal in Non-Title IX Cases of Chapter UWS 11 [precedes UWS 11.016] is created to read:

UWS 11

SUBCHAPTER II

PROCEDURES FOR ACADEMIC STAFF DISMISSAL IN NON-TITLE IX CASES

Section 13. UWS 11.016 is created to read:

(1) “Complainant” means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this section.

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

(a) *Quid pro quo sexual harassment.*

1. 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.
2. An employee of the institution either explicitly or implicitly conditions the provision of an academic, professional, or employment-related opportunity, aid, benefit, or service on an individual’s participation in unwelcome sexual conduct.

(b) *Hostile environment sexual harassment.*

1. Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.
2. Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal “reasonable person” standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work

performance or participation in an university sponsored or supported activity.

Section 14. UWS 11.02(1) and (2) is amended to read:

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

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

Section 15. UWS 11.05(1) and (2) is amended to read:

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

- (a) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought.
- (b) A right to be heard in ~~his or her~~ the academic staff member's defense.
- (c) A right to an advisor, counsel, or other representative, and to offer witnesses;
- (d) A right to confront and cross-examine adverse witnesses. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the hearing committee may reasonably restrict the academic staff member and the complainant from questioning each other.
- (e) A verbatim record of all hearings, which might be a sound recording, provided at no cost.
- (f) Written findings of fact and decision based on the hearing record.
- (g) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.

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

Section 16. UWS 11.06(1) and (2) is amended to read:

(1) The following requirements shall also be observed:

- (a) Any person who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall not be qualified to participate as a member of the hearing body.
- (b) The hearing shall be closed unless the staff member under charges requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., ~~Open Meeting Law~~ Meetings of Governmental Bodies).
- (c) The hearing body shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges.
- (d) The burden of proof of the existence of just cause is on the administration or its representatives.
- (dm) For complaints of sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the standard of proof shall be a preponderance of the evidence.
- (e) If a staff member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit.
- (f) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration and the staff member, with the

chancellor's approval, at any time prior to a final decision by the chancellor; or when appropriate, with the board's approval prior to a final decision by the board.

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

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

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

Section 17. UWS 11.07 is amended to read:

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

Section 18. UWS 11.08 is amended to read:

UWS 11.08 Suspension from duties. Pending the final decision as to dismissal, the academic staff member with an indefinite appointment shall not be relieved of duties, except where, after consulting with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in ~~his or her~~ the staff member's position. Where such determination is made, the staff member may be relieved of ~~his or her~~ the staff member's position immediately, or be assigned to another administrative unit, but ~~his or her~~ the staff member's 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~~ 11.32 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS ~~11.105~~ 11.32 shall apply.

Section 19. UWS 11.10 is amended to read:

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

Section 20. UWS 11.101 to 11.106 are renumbered to UWS 11.28 to 11.33 respectively and UWS 11.28; 11.29(1)(d), (3), and (4); 11.31(1), (3), (5), and (6); 11.30; 11.32(1)(intro.), (1)(a), (1)(c), and (3); and 11.33, as renumbered, are amended to read:.

UWS 11.28 Dismissal for cause in special cases - indefinite academic staff appointments. A member of the academic staff holding an indefinite appointment may be dismissed for serious criminal misconduct, as defined in s. UWS ~~11.102~~ 11.29.

(1)

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

(3) Except as otherwise expressly provided, an academic staff member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. UWS ~~11.103 to 11.106~~ 11.30 to 11.33.

(4) Any act required or permitted by ss. UWS ~~11.103 to 11.106~~ 11.30 to 11.33 to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies forwarded to the Board of Regents under s. UWS 9.02.

UWS 11.30 Reporting responsibility. Any academic staff member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS ~~11.102~~ 11.29 (1) (a), in state or federal court, shall immediately report that fact to the chancellor.

(1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. UWS ~~11.103~~ 11.30 or other credible information that an academic staff member holding an indefinite appointment has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS ~~11.102~~ 11.29 (1) (a), in state or federal court, the chancellor shall:

(a) Within 3 working days of receipt of the report or information, inform the academic staff member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and advise the chancellor as to whether to proceed under this section or ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26. 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 ~~three~~ 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 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~~ 11.28 to 11.33, 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).~~ as follows:

- (a) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS ~~11.101 to 11.106~~ 11.28 to 11.33, 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~~ 11.30 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~~ 11.29 (1) (a), and one or more of the factors listed in s. UWS ~~11.102~~ 11.29 (1) (b) through (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this section.
- (c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 13 or ss. UWS 11.13 to 11.26, and implementing institutional policies, shall be followed.

(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 ~~must~~ shall

demonstrate by clear and convincing evidence that the academic staff member engaged in serious criminal misconduct, as defined in s. UWS ~~11.102~~ 11.29, ~~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.~~

- (1) The chancellor, after consulting with appropriate academic staff governance representatives, may suspend an academic staff member holding an indefinite appointment from duties without pay pending the final decision as to ~~his or her~~ dismissal where:
 - (a) The academic staff member has been charged with a felony of a type listed in s. UWS ~~11.102~~ 11.29 (1) (a) and the chancellor, after following the provisions of s. UWS ~~11.104~~ 11.31 (1) through (3), finds, in addition, that there is a substantial likelihood 1) that one or more of the conditions listed in s. UWS ~~11.102~~ 11.29 (1) (b) through (e) are present, and 2) that the academic staff member has engaged in the conduct as alleged; or
 - (c) The academic staff member has pleaded guilty or no contest to or been convicted of a felony of the type listed in s. UWS ~~11.102~~ 11.29 (1) (a) and one or more of the conditions in s. UWS ~~11.102~~ 11.29 (1) (b) through (e) are present.
- (3) ~~(a)~~ If, after affording the academic staff member the opportunity to be heard, the chancellor determines to suspend without pay, the chancellor shall inform the academic staff member of the suspension, in writing. The chancellor's decision to suspend without pay under this section shall be final, except that:
 - ~~(a)~~ (a) If the chancellor later determines that the academic staff member should not be dismissed the chancellor may discontinue the proceedings, or may impose a lesser penalty, and except as provided in par. (e ~~b~~), shall order the payment of back pay for any period of the suspension for which the academic staff member was willing and able to report for work;
 - ~~(e)~~ (b) If the chancellor later determines, ~~under par. (a) or (b)~~, to recommend or impose as a lesser penalty the suspension of the academic staff member without pay, then any period of suspension without pay so recommended or ordered shall be offset by the period of any suspension without pay actually served by the academic staff member.

UWS 11.33 Board review. A member of the academic staff on an indefinite appointment who has been dismissed for serious criminal misconduct may appeal this action to the board as provided in s. [UWS 11.10](#). If the 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 academic staff member.

Section 21. UWS 11.11 is amended to read:

UWS 11.11 Dismissal for cause-fixed term or probationary academic staff appointments. A member of the academic staff holding a probationary appointment, or a member of the academic staff holding a fixed term appointment and having completed an initial specified period of time, may be dismissed prior to the end of the contract term

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

Section 22. UWS 11.12 is amended to read:

UWS 11.12 Dismissal for cause-teaching members of the academic staff. The policies and procedures of each institution may provide that dismissal for cause of a member of the academic staff having teaching responsibilities and holding a probationary appointment or a fixed term appointment may proceed under ss. UWS 11.02 to 11.10. If the institutional policies and procedures do not specifically make such provisions, dismissal for cause shall be made pursuant to s. UWS 11.11. Dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in s. UWS 11.13 shall be governed by ss. UWS 11.13 to UWS 11.26.

Section 23. Subchapter III – Procedures for Academic Staff Dismissal and Discipline in Title IX Case is created to read:

UWS 11
SUBCHAPTER III
PROCEDURES FOR ACADEMIC STAFF DISMISSAL AND DISCIPLINE IN TITLE
IX CASES

UWS 11.13 Subchapter III 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 Title IX misconduct, as defined in this section.
- (2) “Education program or activity” means, for purposes of Title IX misconduct only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university .
- (3) “Formal Title IX complaint” means, for the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against an academic staff member and requesting that the institution investigate the allegations. At the time of filing of the formal Title IX complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, by electronic mail, or any other method designated by the university. A formal Title IX complaint shall include a physical or digital signature of the complainant or the Title IX Coordinator.
- (4) “Respondent” means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.
- (5) “Sexual harassment” means conduct on the basis of sex that satisfies any of the following:
 - (a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct.
 - (b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, the conduct is so severe, pervasive, and objectionably offensive that it effectively denies the person equal access to the institution’s education program or activity.
- (6) “Title IX misconduct” means sexual assault, stalking, dating violence, or domestic violence as defined in this chapter and sexual harassment as defined in sub. (5).

UWS 11.14 Dismissal for cause or lesser discipline for Title IX misconduct.

(1) An academic staff member may be dismissed for cause, or subject to lesser discipline, for Title IX misconduct as the term is defined in s. UWS 11.13.

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

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

(4) The academic staff member is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process.

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 formal Title IX complaint alleging Title IX misconduct on the basis of sex.

(2) The conduct occurred in the United States.

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

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

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

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

(1) The university shall dismiss formal Title IX complaints consisting of allegations that meet any of the following conditions:

(a) The alleged conduct would not constitute Title IX misconduct if proved.

(b) The alleged conduct did not occur in a university education program or activity.

(c) The alleged conduct did not involve actions against someone physically located in the United States.

(2) The university may dismiss formal Title IX complaints under any of the following conditions:

- (a) The complainant formally requests in writing to withdraw the formal Title IX 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 Title IX complaint.
- (3) The university generally shall decide whether to dismiss a formal Title IX 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 or academic staff member may appeal the dismissal by filing a written appeal with the chancellor. The complainant or academic staff member may appeal on 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 provide the academic staff member and complainant the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor shall simultaneously issue a decision to the complainant and the academic staff member within 30 days of receipt of a written appeal. The chancellor's decision on the appeal of a dismissal shall be final.
- (6) The dismissal of a formal Title IX Complaint does not preclude the university from otherwise pursuing discipline against the academic staff member under other administrative rules or university policies.

UWS 11.17 Investigation of Title IX misconduct allegations.

- (1) Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.
- (2) The investigator shall provide the academic staff member and the complainant with a notice of investigation. The notice shall include all of the following:
- (a) 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 do all of the following:

- (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) 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.

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

UWS 11.18 Review of Evidence.

(1) Prior to completion of the final investigative report, the investigator 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) The academic staff member and the complainant shall have 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.

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, the 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 at least 10 days prior to a hearing. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless the academic staff member and the complainant both waive, in writing, the right to such a hearing.

UWS 11.20 Standing academic staff committee and hearing examiner.

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

(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 no later than 45 days after

completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner.

UWS 11.21 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 which serve as the basis for seeking dismissal or other discipline.
- (c) A right for the complainant and academic staff member to be heard on their own behalf.
- (d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The academic staff member's or complainant's advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. If the academic staff member 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. The academic staff member's or complainant's advisor shall conduct cross examination directly, orally, and in real time. 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 Title IX misconduct.
 2. A description of the procedural steps taken from the receipt of the formal complaint through the hearing committee's or hearing examiner's decision, including any notifications to the academic staff member and the complainant, interviews with the academic staff member, the complainant, and witnesses, site visits, methods used to gather evidence, and hearings held.

3. Conclusions regarding the application of the university's conduct rules and policies to the facts including the following: a determination regarding responsibility for each allegation and the rationale behind each decision, any disciplinary sanction recommended to be imposed, any remedies recommended to restore or preserve equal access to the university's educational program or activity, and the university's procedures and permissible bases for complainant and academic staff member to appeal.

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

(i) Upon the academic staff member's 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).

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 grounds 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.

(d) 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.

(e) The hearing shall be closed unless the academic staff member requests an open hearing, in which case it shall be open.

Note: See subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies.

(f) The hearing committee may, on motion of 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.

(g) 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).

(h) 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.

(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.

UWS 11.23 Hearing Committee or Hearing Examiner Findings and Recommendations to the Chancellor. The hearing committee or hearing examiner shall simultaneously send to the chancellor, to the complainant, and to the academic staff member concerned, within 30 days after the conclusion of the hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations.

UWS 11.24 Chancellor's decision.

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

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

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

UWS 11.25 Appeal to the Board.

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

Note: See subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies.

(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) Conflict of interest or bias for or against the academic staff member or complainant, or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that affected the outcome.

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

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

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

UWS 11.26 Suspension from duties in Title IX misconduct 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 the staff member's position. Where such determination is made, the staff member may be relieved of the staff member's position immediately, or be assigned to another administrative unit, but the staff member's salary shall continue until the chancellor makes a decision as to dismissal, unless the chancellor also makes the determinations set forth in s. UWS 11.32 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 11.32 shall apply.

Section 24. Subchapter IV – Procedures for Dismissal for Cause in Special Cases – Indefinite Academic Staff Appointments of Chapter UWS 11 [precedes UWS 11.27] is created to read:

UWS 11

SUBCHAPTER IV

PROCEDURES FOR DISMISSAL FOR CAUSE IN SPECIAL CASES – INDEFINITE ACADEMIC STAFF APPOINTMENTS

Section 25. UWS 11.27 is created to read:

UWS 11.27 Subchapter IV definition. In this subchapter, "affected party" means any student, employee, visitor, or an individual participating in a university program or activity, who is a victim of an academic staff member's serious criminal misconduct.

Section 26. Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

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

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM	ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND ADOPTING EMERGENCY RULES
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The statement 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.

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 (19), and 17.13(2); renumber UWS 17.10 to 17.085; amend UWS 17.02(1) and (2m) and (7) and (9) and (10) and (11) and (12) and (13m) and (15), 17.05, 17.06(2), 17.07(2), 17.08(1) and (2), 17.085(1)(intro.), 17.09 (intro.), 17.11, 17.12(1) and (3) and (4), 17.13(1) and (3) and (4), 17.14, 17.15, 17.16, 17.17(5), 17.18, and 17.19(3) and (5) and (6); and create Subchapter I, UWS 17.02(2r) and (7m) and (8m) and (9m) and (12m), Subchapter II, 17.09(20), Subchapter III, Subchapter IV, and 17.19(2)(d), relating to addressing allegations of sexual misconduct against students of the University of Wisconsin System.

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

ANALYSIS

Statutes interpreted: ss. [36.09 \(1\)\(a\)](#) and [36.35 \(1\)](#), Stats.

Statutory authority: ss. [36.09 \(1\)\(a\)](#) and [36.35\(1\)](#), 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. [36.35 \(1\)](#), Stats.: “[T]he board shall promulgate rules under ch.227 governing student conduct and procedures for the administration of violations..”

Related statute or rule: N/A

Plain language analysis:

Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct

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 sexual harassment and hostile environment sexual harassment consisting of unwelcome conduct that a reasonable person would determine is 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 must 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 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 if a complainant wishes to withdraw the complaint. A university may still address these dismissed complaints under other code of conduct provisions. 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, and the investigator provides the chancellor with a written report that may include recommended sanctions against the respondent, the chancellor, if appropriate, files dismissal charges against the student, and the student is entitled to a hearing. 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

Under the current rule, students found responsible by the investigator for sexual misconduct and subject to sanctions have a right to a hearing before a hearing committee or hearing examiner. 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, if a party does not have an advisor, 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 or hearing committee 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 or other informal guidance 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 or other informal guidance. 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 federal funding. All universities that receive federal funding are required to revise policies and procedures to comply with the federal regulations.

Summary of factual data and analytical methodologies:

Consulting with UW System institutions to determine how many Title IX cases are anticipated for this year, as well as the cost of advisors and hearing officers.

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

UW System posted its Economic Impact Analysis and Fiscal Estimate on its website to make it available for comment. UW System also informed the UW System institutions that it had posted these documents. The documents remained posted on the website for 14 days from October 12, 2020 through October 26, 2020. No comments on the economic impact or fiscal estimate were received.

Fiscal Estimate:

See attached Economic Impact Analysis and Fiscal Estimate.

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:

Sarah Harebo
Title IX and Clery Administrator
University of Wisconsin System Administration

1848 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706;
Telephone 608-262-6497;
email address: sharebo@uwsa.edu.

Public Comments:

The Board of Regents held a public hearing on November 30, 2020 preceded by a public comment period related to the proposed rule. 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; (2) by email to compliance@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.

TEXT OF RULE

Section 1. Subchapter I – General of Chapter UWS 17 [precedes UWS 17.01] is created to read:

UWS 17
SUBCHAPTER I
GENERAL

Section 2. UWS 17.02(1) and (2m) are amended to read:

(1) “Chief administrative officer” means the chancellor of an institution ~~or dean of a campus or their~~ the chancellor’s 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 17.151.

Section 3. UWS 17.02(2r) is created to read:

(2r) “Consent” means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in s. UWS 17.151. A person is unable to give consent if the person is in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

Section 4. UWS 17.02(7) is amended to read:

(7) “Disciplinary sanction” means any action listed in s. UWS ~~17.10~~ 17.085 (1) taken in response to student nonacademic misconduct.

Section 5. UWS 17.02(7m) and (8m) are created to read:

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

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

Section 6. UWS 17.02(9) is amended to read:

(9) “Hearing examiner” means an individual, other than the investigating officer, appointed by the chief administrative officer in accordance with s. UWS 17.06 (2) for the purpose of conducting a hearing under s. UWS 17.12 or 17.153.

Section 7. UWS 17.02(9m) is created to read:

(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.

Section 8. UWS 17.02(10), (11), and (12) are amended to read:

(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~~ the individual's 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 17.153](#).

Section 9. UWS 17.02(12m) is created to read:

(12m) "Party" refers to a respondent or complainant involved in a disciplinary procedure under Subchapter III of this chapter.

Section 10. UWS 17.02(13m) and (15) are amended to read:

(13m) "Respondent," 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 17.151.

(15) "Student affairs officer" means the dean of students, 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 11. 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](#) or [17.152](#). For allegations involving ~~sexual assault, domestic violence, dating violence, stalking, or sexual harassment~~ sexual misconduct, as defined in s. UWS 17.151, the chief administrative officer ~~shall involve the Title IX Coordinator, or designee, in accordance with applicable institutional policies~~ shall serve as the investigating officer.

Section 12. 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 13. 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 14. 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 [17.151](#)~~ 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 [17.151](#) 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~~ the student 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 15. Subchapter II – Procedures for Student Nonacademic Discipline in Non-Sexual Misconduct Cases of Chapter UWS 17 [precedes UWS 17.09] is created to read:

UWS 17

SUBCHAPTER I

PROCEDURES FOR STUDENT NONACADEMIC DISCIPLINE IN NON_SEXUAL MISCONDUCT CASES

Section 16. UWS 17.09(intro.) amended to read:

UWS 17.09 Conduct subject to disciplinary action. In accordance with s. [UWS 17.08](#), the university may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct. Conduct defined in s. UWS 17.09 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. 17.151, may be consolidated with such charges and addressed with the disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.152 to 17.156.

Section 17. UWS 17.09(2) and (3) and (17) and (18) and (19) are repealed.

Section 18. UWS 17.09(20) is created to read:

(20) RETALIATION. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in ss. UWS 17.152 to 17.156, 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 17.152 to 17.156.

Section 19. UWS 17.10 is renumbered to UWS 17.085 and 17.085(1)(intro.) 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 17.152 to 17.154, are any of the following:

Section 20. 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~~ 17.085 (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~~ shall 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~~ 17.085 (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~~ 17.085 (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~~ 17.085 (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 21. 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~~ shall 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~~ the respondent's 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~~ 17.085 (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~~ 17.085 (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~~ the respondent's own behalf to questions asked of ~~him or her~~ the respondent 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 ~~47.10~~ 17.085 (1) (h) to (j).
2. A preponderance of the evidence, when the sanction to be imposed is one of those listed in s. UWS ~~47.10~~ 17.085 (1) (a) to (g).
3. ~~A preponderance of the evidence, when the sanction to be imposed, in all cases of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.~~

(g) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS ~~47.10~~ 17.085 (1) (a) to (g) that differs from the recommendation of the investigating officer. Sanctions under s. UWS ~~47.10~~ 17.085 (1) (h) to (j) may not be imposed unless previously recommended by the investigating officer.

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

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

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

(k) Disciplinary hearings are subject to s. 19.85, Stats., the Wisconsin open meetings law ~~the Wisconsin open meetings law~~ Open Meetings of Governmental Bodies 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 22. UWS 17.13(1) is amended to read:

(1) ~~Where~~ 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~~ 17.085 (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 23. UWS 17.13(2) is repealed.

Section 24. UWS 17.13(3) and (4) are amended to read:

(3) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:

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

(b) Appropriate procedures were not followed which resulted in material prejudice to the respondent ~~or complainant~~.

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

(4) If the chief administrative officer makes a finding under sub. (3), ~~the chancellor~~ the chief administrative officer may return the matter for consideration, or may invoke an appropriate remedy of ~~his or her~~ the chief administrative officer's own. The chief administrative officer's decision shall be communicated ~~simultaneously~~ to the respondent ~~and the complainant~~.

Section 25. UWS 17.14 is amended to read:

UWS 17.14 Discretionary appeal to the Board of Regents. ~~Institutional~~ 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 ~~any party~~ the 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 26. UWS 17.15 is amended to read:

UWS 17.15 Settlement. ~~The~~ For conduct defined in s. UWS 17.09, 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 27. Subchapter III – Procedures for Student Nonacademic Discipline in Sexual Misconduct Cases of Chapter UWS 17 [precedes UWS 17.151] is created to read:

UWS 17
SUBCHAPTER III
PROCEDURES FOR STUDENT NONACADEMIC DISCIPLINE IN SEXUAL
MISCONDUCT CASES

UWS 17.151 Sexual misconduct subject to disciplinary action under ss. UWS 17.152 to 17.157. 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. Sexual misconduct, as defined in this section, shall use the disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.152 to 17.157.

(1) SEXUAL HARASSMENT. Conduct on the basis of sex that satisfies any of the following:

- (a) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in an education program or activity of the university that when using the legal “reasonable person” standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.
- (b) Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal “reasonable person” standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably

interfering with an individual's academic or work performance or participation in a university sponsored or supported activity.

(2) SEXUAL ASSAULT. An offense that meets any of the following definitions:

- (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 as per s. 944.06, Stats.
- (d) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent as per 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 as per ss. 813.12(1)(am) and 968.075, Stats.

(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:

- (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 complainants.
 - 2. Allowing another person to observe, record, or photograph sexual activity or private body parts of one or more complainants.

3. Otherwise distributing recordings, photographs, or other images of the same of one or more complainants.
- (b) Masturbating, touching one's genitals, or exposing one's genitals in complainant's presence without the consent of complainant, or inducing another person to do the same.
- (c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.
- (d) Inducing incapacitation through deception for the purpose of making another person 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 the complainant into sexual activity or providing money or anything of value:
 1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more persons.
 2. Other information of a sexual nature, including sexual history or sexual orientation.

UWS 17.152 Sexual misconduct 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 17.1085(1), for sexual misconduct defined in s. UWS 17.151, and conduct described in s. UWS 17.09 may be consolidated with sexual misconduct charges pursuant to this section and consistent with s. UWS 17.08. When responding to sexual misconduct, the university may take the following actions:

- (a)** The university may consolidate disciplinary procedures as to allegations of sexual misconduct, as defined in s. UWS 17.151, 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.
- (b)** In consultation with the complainant, the university may choose to address allegations of sexual misconduct with non-disciplinary measures outside the procedures of this chapter. Non-disciplinary measures may include supportive measures and protective measures for complainant, which may or may not involve the respondent.

(2) TITLE IX MISCONDUCT. Either a complainant or the Title IX Coordinator may file the formal Title IX complaint as defined in s. UWS 17.02(8m). Unless a formal Title IX complaint is dismissed under subsection 2(a) or 2(b), sexual misconduct under this section shall also be considered "Title IX misconduct" and require associated process. Dismissals will be handled as follows:

- (a)** The university shall dismiss a formal Title IX complaint that does not meet all of the following requirements:
 1. The alleged conduct is on the basis of sex and meets the definitions of sexual harassment, as defined in s. UWS 17.151(1)(a), or sexual assault,

dating violence, domestic violence, or stalking, as defined in s. UWS 17.151 (2) to (5).

2. The alleged conduct occurred within a university “education program or activity,” as defined in s. UWS 17.02(7m).

3. The alleged conduct occurred against the complainant while in the United States.

4. The complainant is participating in or attempting to participate in the university’s education program or activity at the time the complaint is filed.

(b) The university may dismiss a formal 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 formal Title IX complaint or any allegations therein.

2. The respondent is no longer enrolled in the university.

3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal Title IX complaint or allegations therein.

(c) Upon dismissal of a formal Title IX complaint, the university shall promptly send written notice of the dismissal and reason therefore simultaneously to the complainant and respondent. The complainant and respondent have the right to appeal the dismissal of a formal Title IX complaint under s. UWS 17.19(1).

(d) Dismissal of a formal Title IX complaint does not preclude other university action under this chapter.

(3) 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) The details known at the time of issuing notice, including:

1. The identities of the complainant and respondent involved in the incident, if known.

2. The conduct allegedly constituting sexual misconduct.

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 that making a knowingly false statement or refusing to comply regarding a university matter may violate s. UWS 17.09(11) and could result in additional sanctions.

(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 Title IX misconduct.
 - (g) Information about the nonacademic misconduct process available under this chapter 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.
- (4) INVESTIGATION.** During the investigation, the investigating officer shall do all of the following:
- (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; the university may, however, 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.
- (5) REVIEW OF EVIDENCE.** Prior to completion of the final investigative report, as described in sub. (6), the university shall provide the complainant and respondent and their advisors, if any:
- (a) 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, regardless of whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. This shall include information upon which the university does not intend to rely in reaching a determination regarding responsibility as well as any inculpatory or exculpatory evidence.
 - (b) 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.
- (6) FINAL INVESTIGATIVE REPORT.** The investigator shall create an investigative report that fairly summarizes relevant evidence. The final investigative report may contain

recommended determinations as to whether sexual misconduct occurred and specification of any sanction recommended. 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. Upon distribution of the final investigative report to the complainant and respondent, the following conditions shall apply:

- (a) 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.
- (b) 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.

UWS 17.153 Sexual misconduct hearing.

- (1) The university shall have the right to decide whether a hearing examiner or hearing committee shall hear the matter.
- (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 17.152(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:

- a. 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
- b. 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 17.152(4)(e).

4. May take reasonable steps to maintain order and adopt procedures for the questioning of parties or witnesses appropriate to the circumstances of the testimony, provided the advisors for the complainant and respondent are allowed to effectively cross-examine any party or witness.

(5) The party's advisors shall conduct cross examination directly, orally, and in real time by the party's advisor. A party may not personally conduct cross examination. The following conditions shall apply:

- (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 Title IX misconduct, 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 subchapter, including any Title IX misconduct, any disciplinary sanctions the university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the university's education program or activity shall be provided by the university to the complainant.

(f) One or more of the disciplinary sanctions listed in s. UWS 17.085 (1), if imposed by the hearing examiner or committee.

(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. If an appeal is filed, the decision regarding responsibility becomes final on the date the university provides the complainant and respondent with the written determination of the result of the appeal. If no appeal is filed, the decision regarding responsibility becomes final once the last date to appeal passes.

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

UWS 17.154 Appeal to the chancellor for 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 formal 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.

UWS 17.155 Discretionary appeal to the Board of Regents for 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:

(1) Notify the other party in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

(2) Issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent.

UWS 17.156 Settlement for sexual misconduct.

(1) The procedures set forth in this chapter allow the university, the respondent, and the complainant to voluntarily enter into a settlement agreement or informal resolution regarding the alleged misconduct, any time after the notice of investigation has been distributed 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 the complainant, respondent, and the Title IX Coordinator or designee except in any of the following circumstances:

(a) There is no identified complainant.

(b) The complainant has chosen not to participate in proceedings pursuant to this subchapter.

(c) Title IX misconduct is involved, and the complainant has withdrawn the formal Title IX complaint.

(2) In the circumstances described in sub. (1), the agreement and its terms may be signed by only the respondent and the Title IX Coordinator or designee. The case is concluded when a copy of the signed agreement is delivered to the complainant, if any, 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 17.152 to 17.155.

Section 28. Subchapter IV – Effect of Discipline, Petitions for Restoration, and Emergency Suspension of UWS 17 [precedes UWS 17.16] is created to read:

UWS 17

SUBCHAPTER IV

EFFECT OF DISCIPLINE, PETITIONS FOR RESTORATION, AND EMERGENCY
SUSPENSION

Section 29. UWS 17.16 is amended to read:

UWS 17.16 Effect of discipline within the institution. A respondent who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS ~~17.10~~ 17.085 (1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11 or 17.152, shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

Section 30. UWS 17.17(5) is amended to read:

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

Section 31. UWS 17.18 is amended to read:

UWS 17.18 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). 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~~ from 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 harassment, sexual assault, dating violence, domestic violence, and stalking~~ sexual misconduct, the readmission decision ~~should~~ shall be made in consultation with the Title IX Coordinator and reasonable attempts shall ~~the complainant should~~ be

notified be made to notify the complainant of any change to the disciplinary outcome. If enrolled as a student at the time of the petition, the complainant shall be provided opportunity to respond to the petition prior to the readmission decision.

Section 32. UWS 17.19(2)(d) is created to read:

(d) In cases of sexual misconduct as defined in s. UWS 17.151, the chief administrative officer makes reasonable attempts to consult with the complainant and offer protective measures.

Section 33. UWS 17.19(3), (5), and (6) are amended to read:

(3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the respondent. In cases of ~~sexual harassment, sexual assault, dating violence, domestic violence, and stalking~~ sexual misconduct, as defined in s. UWS 17.151, the written notification of the emergency suspension shall be delivered simultaneously to the complainant and the respondent. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the respondent and is final.

(5) An emergency suspension imposed in accordance with this section shall be in effect until the decision in the hearing on the underlying charges pursuant to s. [UWS 17.12](#) or 17.153 is rendered or the chief administrative officer rescinds the emergency suspension. In no case shall an emergency suspension remain in effect for longer than 30 days, unless the respondent agrees to a longer period.

(6) If the chief administrative officer determines that none of the conditions specified in sub. (2) (c) are present, but that misconduct may have occurred, the case shall proceed in accordance with ~~s.~~ ss. UWS 17.12 or 17.153, as applicable.

Section 34. Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

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

The Board received written comments from one commenter on the drafts of the Board's proposed rule change to Chapters UWS 4, 7, 11, and 17. The Board received no verbal comments from its public hearing on November 30, 2020. The written comment originated from an internal source within the UW System. The commenter expressed concerns about the rigidity of the process in UWS 17. By the commenter's reading of the rule, it seemed that all allegations of sexual misconduct must either end in a settlement or a hearing. The commenter would prefer ways for allegations to end by less formal means, such as an outcome letter.

Appendix: List of Written Commenters

- Buzz Bares, Acting Dean of Students, UW-Oshkosh