

5/13/2021

## BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

### **Audit Committee**

Via WebEx Videoconference

Thursday, June 3, 2021

8:45 a.m. – 10:00 a.m

- A. Calling of the Roll
- B. Declaration of Conflicts
- C. Approval of the Minutes of the April 8, 2021 Meeting of the Audit Committee
- D. Internal Audit
  - 1. Fiscal Year 2021 Audit Plan Progress Report
  - 2. Summarized Results of Audits Recently Issued
  - 3. Approval of Fiscal Year 2022 Audit Plan
  - 4. Independence Statement
- E. Compliance
  - 1. Precollege/Youth Protection Update
  - 2. Approval of Revisions to Regent Policy Document 14-2, *Sexual Violence and Sexual Harassment*
- F. Information Security
  - 1. Information Security Update
  - 2. Internal Controls and Enterprise Risk Management Update

## **FISCAL YEAR 2021 AUDIT PLAN PROGRESS**

### **REQUESTED ACTION**

For information and discussion only.

### **SUMMARY**

One of the responsibilities of the Audit Committee, as outlined in the committee charter, is to review and approve the annual internal audit plan and receive interim progress reports at least quarterly.

The attached chart provides a summary of audit progress for the Fiscal Year 2021 Audit Plan.

### **Presenter(s)**

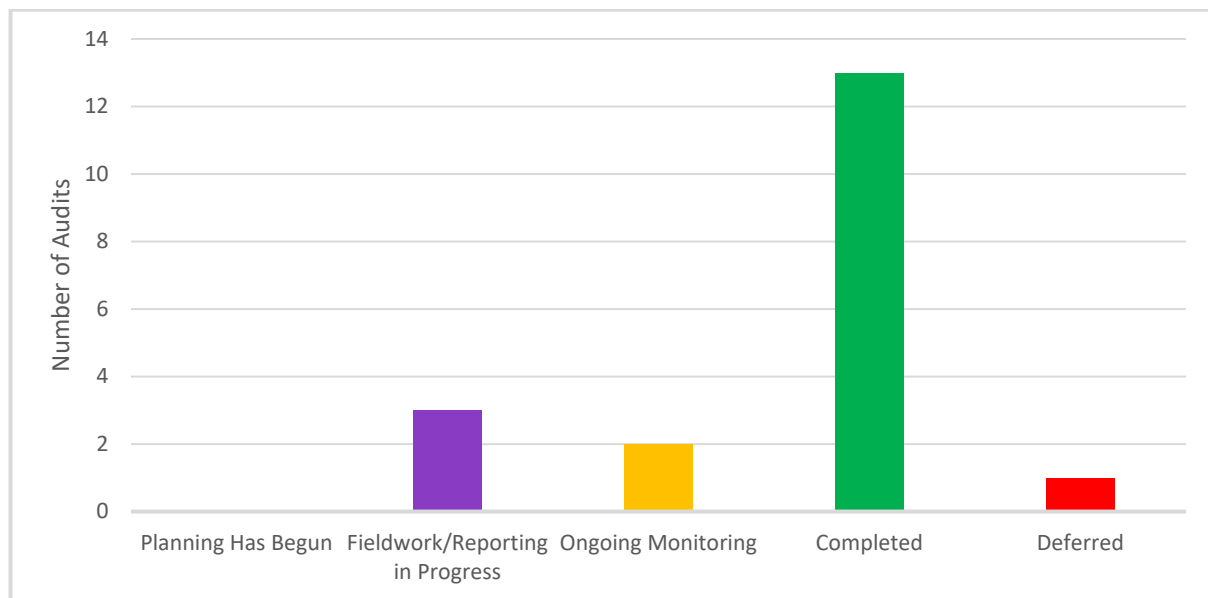
- Lori Stortz, Chief Audit Executive

### **ATTACHMENTS**

- A) UW System Administration Office of Internal Audit Fiscal Year 2021 Audit Plan Progress Chart.

**UW SYSTEM ADMINISTRATION  
OFFICE OF INTERNAL AUDIT  
FISCAL YEAR 2021  
AUDIT PLAN PROGRESS**

	<b>Title</b>	<b>Risks</b>
1	Payroll (Continuous Monitoring)	Fraud
2	Purchasing Cards (Continuous Monitoring)	Fraud, Embezzlement
3	Post-Tenure Review	Compliance with Board Policy
4	Oversight of Programs with Minors	Physical Safety and Security
5	Other Affiliated Organizations	Fraud, Embezzlement, Reputation
6	Laboratory Safety	Physical Security and Safety, Legal Compliance
7	Emergency Grant Aid Payments to Students Under the CARES Act	Regulatory Compliance, Reputation
8	Information Technology Disaster Recovery	Continuity of Operations, Data Protection
9	Incident Response	Data Availability, Breach of Information, Reputation
10	Security Awareness	Data Security, Reputation
11	Foreign Influence	Regulatory Compliance, Reputation
12	Contracts with Private Entities	Conflict of Interest, Reputation
13	NCAA Division III Athletics Financial Transactions	Fraud, Conflicts of Interest, Reputation
14	Independent Contractors	Fraud, Regulatory Compliance, Conflict of Interest
15	Change Requests of Bank and Contact Information	Fraud
16	Non-Competitive Bids	Fraud, Regulatory Compliance, Conflicts of Interest
17	NCAA Athletics Division I Consulting Engagements	Data Accuracy
18	Internal Assessment	Conformance with Standards, Code of Ethics
19	Emergency Grant Aid Payments to Students Under the CRRSAA	Regulatory Compliance, Reputation



## **SUMMARIZED RESULTS OF AUDITS RECENTLY ISSUED**

### **REQUESTED ACTION**

For information and discussion only.

### **SUMMARY**

Since the April 8, 2021 meeting of the Audit Committee, the Office of Internal Audit has issued the following reports:

- Incident Response Audit - Executive Summary
- Emergency Grant Aid Payments to Students under the *Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA)* Audit - Executive Summary
- Internal Assessment - Executive Summary
- Report on Self-Assessment
- Quality Assurance and Improvement Program (QAIP)

### **Presenter(s)**

- Lori Stortz, Chief Audit Executive

### **BACKGROUND**

One of the responsibilities of the Audit Committee, as outlined in the committee charter, is to summarize results of audits recently issued.

**APPROVAL OF FISCAL YEAR 2022 AUDIT PLAN**

**REQUESTED ACTION**

Adoption of Resolution D.3.

**Resolution D.3.** That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Fiscal Year 2022 Audit Plan.

**SUMMARY**

The Board of Regents annually reviews and approves the UW System's internal audit plan, with interim progress reports provide to the Audit Committee at least quarterly.

**Presenter**

- Lori Stortz, Chief Audit Executive

**BACKGROUND**

One of the responsibilities of the Audit Committee, as outlined in the committee charter, is to review and approve the annual internal audit plan and receive interim progress reports.

June 2021

**Office of Internal Audit Fiscal Year 2022 Audit Plan**

<b>Continuous Auditing</b>	<b>Risks</b>	<b>Objectives/Procedures</b>
Payroll	<ul style="list-style-type: none"> <li>• Fraud</li> <li>• Data Accuracy</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic identification of payroll conditions or trends that warrant further review or investigation. Examples may include overload, overtime, and gross payments as well as payments after termination and the summarization of earnings code data to identify trends and deviations from expectations.</li> <li>• Providing results of testing to institution/UW System management to improve compliance and support potential enhancement of policy.</li> </ul>
Purchasing Cards (P-Cards)	<ul style="list-style-type: none"> <li>• Fraud</li> <li>• Embezzlement</li> <li>• Compliance with Policy</li> </ul>	<ul style="list-style-type: none"> <li>• Systematic identification of purchasing card transactions and trends that warrant further review and investigation.</li> <li>• Summarization of active P-cards, open credit, ineligible vendors, amount spent by vendor, and other analytics.</li> <li>• Providing results of testing to institution/UW System management to improve compliance and support potential enhancement of policy.</li> </ul>
<b>Fiscal Year 2021 In Process</b>	<b>Risks</b>	<b>Objectives/Procedures</b>
Information Security Awareness	<ul style="list-style-type: none"> <li>• Data Protection</li> <li>• Reputational</li> <li>• Operational</li> <li>• Financial</li> </ul>	<ul style="list-style-type: none"> <li>• Test compliance with UWSA Policy 1032.</li> <li>• Test performance of monthly phishing campaign exercises.</li> <li>• Test enforcement of consequences related to not meeting the security training or phishing requirements.</li> </ul>
Contracts with Private Entities	<ul style="list-style-type: none"> <li>• Conflicts of Interest</li> <li>• Reputational</li> </ul>	<ul style="list-style-type: none"> <li>• Test compliance with Board of Regents Policy 13-1.</li> </ul>

		<ul style="list-style-type: none"> <li>Evaluate System and institutional processes for identification, negotiation, and evaluation of contracts covered by the policy.</li> </ul>
NCAA Division III Athletics Financial Transactions	<ul style="list-style-type: none"> <li>Fraud</li> <li>Conflicts of Interest</li> <li>Reputational</li> </ul>	<ul style="list-style-type: none"> <li>Test and evaluate financial transactions for each of the comprehensive institutions.</li> </ul>
Change Requests of Bank and Contact Information	<ul style="list-style-type: none"> <li>Fraud</li> </ul>	<ul style="list-style-type: none"> <li>Test and evaluate compliance with UWSA Policy 363.</li> </ul>
Student Emergency Grant Aid Payments to Students under the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)	<ul style="list-style-type: none"> <li>Compliance with CRRSAA Supplemental Agreement and institutional allocation plans</li> </ul>	<ul style="list-style-type: none"> <li>Test compliance with agreements and institutional allocation plans.</li> </ul>
<b>Fiscal Year 2022 New Audits</b>		
Student Discrimination Complaint and Appeal Process	<ul style="list-style-type: none"> <li>Compliance with Laws and Board Policy</li> <li>Reputational</li> </ul>	<ul style="list-style-type: none"> <li>Test compliance with each institution’s practices per policies and procedures related to student discrimination complaints and appeals.</li> </ul>
Management of Native American Human Remains and Artifacts	<ul style="list-style-type: none"> <li>Compliance with Laws</li> <li>Reputational</li> </ul>	<ul style="list-style-type: none"> <li>Determine institutions’ compliance with NAGPRA and Chapter 44.</li> <li>Evaluate institutions’ management and storing of ancestors (Native American or other remains) and Native American cultural artifacts.</li> <li>Evaluate and review each institutions’ practices and tribal consultation responsibilities related to working with other issues surrounding their campuses’ archeological practices (campus planning, land management, etc.).</li> </ul>
Shared Financial System Separation of Duties Management	<ul style="list-style-type: none"> <li>Fraud</li> <li>Data Integrity</li> <li>Separation of Duties</li> </ul>	<ul style="list-style-type: none"> <li>Using COSO’s Internal Control Framework, complete evaluations to assess control activities with respect to separation of duties management.</li> </ul>
ShopUW+ - Separation of Duties	<ul style="list-style-type: none"> <li>Fraud</li> <li>Data Accuracy</li> <li>Separation of Duties</li> </ul>	<ul style="list-style-type: none"> <li>Review and evaluate the assignment of roles in SFS related to Jaggaer, especially as it related to access, change</li> </ul>

		<p>requests and removal of incompatible duties.</p> <ul style="list-style-type: none"> <li>• Review and evaluate the design of management level controls over procurement.</li> </ul>
Information Technology Remote Access	<ul style="list-style-type: none"> <li>• Data Security</li> <li>• Reputational</li> <li>• Operational</li> <li>• Financial</li> </ul>	<ul style="list-style-type: none"> <li>• Review and evaluate whether remote access points have been closed to direct access from the internet.</li> <li>• For remote access points which cannot be closed, review and evaluate the additional layers of defense which have been implemented.</li> </ul>
Information Technology Disaster Recovery – Backups of mission critical/high-risk data systems	<ul style="list-style-type: none"> <li>• Continuity of Operations</li> <li>• Data Protection</li> <li>• Reputational</li> <li>• Operational</li> <li>• Financial</li> </ul>	<ul style="list-style-type: none"> <li>• Review and evaluate back-up plan for mission critical/high-risk data systems.</li> <li>• Review and evaluate the process to test backups of the above.</li> </ul>
Information Security Program Accountability	<ul style="list-style-type: none"> <li>• Data Security</li> <li>• Reputational</li> <li>• Operational</li> <li>• Financial</li> </ul>	<ul style="list-style-type: none"> <li>• Test that institutions have named an Information Security designee.</li> <li>• Test delivery of the monthly information security status reports to the Chancellor.</li> <li>• Review and evaluate the design of the monthly information security status reports.</li> </ul>
Conflicts of Interest and Outside Activity Reporting	<ul style="list-style-type: none"> <li>• Fraud</li> <li>• Reputational</li> <li>• Conflicts of Interest</li> <li>• Compliance with Policy</li> </ul>	<ul style="list-style-type: none"> <li>• Review and evaluate applicable policies.</li> <li>• Validate management’s processes to comply with the policies.</li> <li>• Test compliance with the policies.</li> </ul>
Criminal Background Checks	<ul style="list-style-type: none"> <li>• Reputational</li> <li>• Conflicts of Interest</li> <li>• Regulatory Compliance</li> <li>• Compliance with Policy</li> </ul>	<ul style="list-style-type: none"> <li>• Test compliance with Regent Policy 20-19.</li> </ul>
Engagement and Management of Independent Contractors	<ul style="list-style-type: none"> <li>• Fraud</li> <li>• Reputational</li> <li>• Conflicts of Interest</li> <li>• Data Protection</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluate policies regarding the engagement and management of independent contractors.</li> <li>• Test compliance with those policies.</li> </ul>



Contracts with Research Companies	<ul style="list-style-type: none"> <li>• Reputational</li> <li>• Conflicts of Interest</li> <li>• Compliance with Policy</li> </ul>	<ul style="list-style-type: none"> <li>• Test compliance with Regent Policy Document 13-6.</li> </ul>
NCAA Athletics Divisions I and II Consulting Engagements	<ul style="list-style-type: none"> <li>• Data Accuracy</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed upon procedures engagements over financial matters (Green Bay, Milwaukee, and Parkside).</li> </ul>
Madison NCAA Athletics Compliance Audit	<ul style="list-style-type: none"> <li>• Compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Perform the recommended procedures suggested by the comprehensive program in the NCAA Division I Compliance Audit Guide published by the Association of College and University Auditors (ACUA).</li> </ul>
Internal Assessment	<ul style="list-style-type: none"> <li>• Conformance with Standards and Code of Ethics</li> </ul>	<ul style="list-style-type: none"> <li>• Perform and summarize a self-assessment of the internal audit activity.</li> </ul>
<b>Advisory/Consulting Services</b>		
	Follow Up to Allow Audit Comments to be Closed	
	Administrative Transformation Project	
	Enterprise Risk Management	
<b>Audits/Projects as Requested by Management</b>		
	Fifteen percent of audit time is available for audits and special projects as requested by System or institutional leaders.	
	Past projects have included assistance with fraud and other investigations, program assessments, compliance with policy assessments, and special audits.	

## **INDEPENDENCE STATEMENT**

### **REQUESTED ACTION**

For information and discussion only.

### **SUMMARY**

The Institute of Internal Auditors *International Standards for the Professional Practice of Internal Auditing (Standards)* require that the internal audit activity must be independent and that internal auditors must be objective in performing their work.

The Audit Committee Charter of the Board of Regents requires the Chief Audit Executive to report to the Board of Regents through the Audit Committee directly and to the System President. The Audit Committee also performs the following functions:

- Approving the internal audit charter.
- Approving the risk-based internal audit plan.
- Receiving communications from the chief audit executive on the internal audit activity's performance relative to its plan and other matters.
- Approving decisions regarding the appointment and removal of the chief audit executive.
- Approving the remuneration of the chief audit executive.
- Making appropriate inquiries of management and the chief audit executive to determine whether there are inappropriate scope or resource limitations.

The Office of Internal Audit is compliant with the organizational independence requirements of the *Standards*.

### **Presenter(s)**

- Lori Stortz, Chief Audit Executive

## **PRECOLLEGE/ YOUTH PROTECTION UPDATE**

### **REQUESTED ACTION**

- For information and discussion only

### **SUMMARY**

Campuses opened up to minors on May 14, 2021. In preparation, all campuses have been trained by the UW System Office of Compliance and Integrity (OCI) on how to develop Covid-19 mitigation plans. These plans included the following: daily symptom checking protocols, testing mandates, and other non-pharmaceutical interventions. The OCI has worked with Precollege Liaisons to establish a registration process for the institution to have visibility to all youth programming on their campus. This centralized registration positions campuses to implement future policy mandates as well as the ongoing audit remediation.

### **Presenter(s)**

- Prenicia Clifton, UW System Director of Youth Protection and Compliance
- Katie Ignatowski, UW System Chief Compliance Officer

### **BACKGROUND**

In January of 2021, the UW System Director of Youth Protection and Compliance began to introduce campuses to proper protocols for returning minors to campuses post-Covid-19 closures through a one-day seminar with presentations from the American Camp Association, Praesidium Inc., Department of Agriculture, Trade-and Consumer Protection, Food and Recreation Safety Division, Youth Mental Health Specialists, and Prenicia Clifton. Additionally, professional development workshops were offered monthly between February and May to elaborate on the key requirements to safely open campuses to youth. Three hundred youth serving staff registered for the one-day seminar and 125 people attended monthly workshops.

## **Previous Action or Discussion**

Prencia Clifton was introduced at the Audit Committee at the October 5, 2020 meeting at which time she provided a high-level overview of the work she would be collaborating on with UW System institutions to support the protection of minors on campus.

## **Related Policies**

[Interim: Summer 2021 COVID-19 Testing Requirements](#)

[Testing Directive](#)

[Testing Guidance](#)

**REGENT POLICY DOCUMENT REVIEW:  
RPD 14-2, "SEXUAL VIOLENCE AND SEXUAL HARASSMENT"**

**REQUESTED ACTION**

Adoption of Resolution E.2. approving revisions to Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment".

**Resolution E.2.** That, upon the recommendation of the President of the UW System, the University of Wisconsin System Board of Regents approves revisions to Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment".

**SUMMARY**

Title IX of the Education Amendments of 1972 requires that all educational institutions that receive federal funds 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. At that time, the Board of Regents approved changes to Regent Policy Document 14-2 to reflect the emergency rule changes. Now that the permanent changes to the administrative rules have been approved, the UW System is seeking approval of additional changes to Regent Policy Document 14-2 that correspond with the permanent rules.

The attached proposal to modify Regent Policy Document 14-2 includes technical edits to further clarify and align language with the federal regulations and the permanent rule changes to the Wisconsin Administrative Code. Specifically, the proposed version of Regent Policy Document 14-2 and its appendices contain edits that align the definitions and procedural language with the definitions and procedures in the final versions of Chapters UWS 4, 7, 11, and 17. Appendix C, "Policy for Investigation and Resolution of Formal Title IX Complaints Against University Employees Other than Faculty and Academic Staff," required

clarification and edits to procedural guarantees and the appeal rights related to the dismissal of Title IX complaints, Chancellor's decision, and appeal to the Board of Regents. All edits made to Appendix C are in line with the relevant language in UWS Chapters 4 and 11.

## **Presenter**

- Sarah Harebo, UW System Title IX and Clery Administrator

## **BACKGROUND**

The proposed changes include revisions to Appendix A, Appendix B, and Appendix C of Regent Policy Document 14-2, which provide templates for UW System institution policies and definitions to address the content of the Regent Policy Document and Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code.

## **Previous Action or Discussion**

In December 1980, the Board of Regents adopted Resolution 2297, which created Regent Policy Document (RPD) 80-8, outlining a process for institutions to report incidents of sexual harassment, as well as establishing the Regent Task Force on the Status of Women. In April and May 1981, the Board of Regents adopted Resolutions 2361 and 2383, which respectively adopted many of the task force recommendations and replaced RPD 80-8 with RPD 81-2. Resolution 3758, adopted in April 1987, updated RPD 81-2, which was subsequently renumbered as RPD 14-2. The Board of Regents updated RPD 14-2 through the adoption of Resolution 10786 in December 2016. On August 5, 2020, the Board of Regents approved Resolution 11475, which approved interim policy changes to RPD 14-2 to comply with new federal Title IX regulations, which took effect on August 14, 2020.

## **Related Policies**

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

## **ATTACHMENTS**

- A) Clean Copy of Proposed Amendments to Regent Policy Document 14-2
- B) Redlined Copy of Proposed Amendments to Regent Policy Document 14-2

## **Regent Policy Document 14-2 (*formerly 81-2*), Sexual Violence and Sexual Harassment**

### **SCOPE**

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

### **PURPOSE**

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

### **POLICY STATEMENT**

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

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

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



## OVERSIGHT, ROLES, AND RESPONSIBILITIES

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

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

1. Amnesty. A provision to exempt sexual violence or sexual harassment complainants, respondents, and witnesses from receiving citations or being subjected to the student disciplinary process for underage consumption of alcohol under specified circumstances  
(<https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>).
2. Assessment. A description of the methodology for how the institution will assess the efficacy of its policy and educational efforts undertaken as part of this policy.
3. Collection of Data. In accordance with state and federal law, a statement that includes statistics on the number of reports received by employees alleging sexual assault of a student shall be reported in the UW System Sexual Assault Reports consistent with § 36.11(22), Wis. Stats., and the federal Jeanne Clery Act.
4. Confidentiality. Identification of employees or affiliates who may maintain in confidence any report of sexual violence or sexual harassment. Limitations or barriers to confidentiality of other employees should be addressed.
5. Definitions. Relevant words and phrases used in the policy should be defined consistent with applicable System rules and policies. (Definitions are included in **Appendix B**):
6. Education/Training. Identification of mandatory education and training concerning sexual violence and sexual harassment.
7. False Information. Information about response and consequences when an individual knowingly makes a material misstatement of fact in connection with a report of sexual violence or sexual harassment. The information should indicate the filing of a complaint that does not result in a finding of prohibited conduct, alone, is not evidence of intent to file a false report.
8. Informal Resolution. A description of the informal Title IX misconduct resolution process, if offered.

9. Office for Civil Rights Complaint. A description of how individuals can file a complaint with the U.S. Department of Education, Office for Civil Rights under Title IX.
10. Official with Authority: Identification of those individuals who are considered officials with authority to institute corrective measures on behalf of the university.
11. Policy Statement. A statement expressing the institution's commitment to promoting an environment free from incidents of sexual violence and sexual harassment.
12. Procedures. Reference to, or inclusion of, institutional policies governing procedures for reporting allegations of sexual violence and sexual harassment, including information for reporting to campus and local police as well as for filing a formal Title IX complaint.
13. Prohibition against Retaliation. A statement explicitly prohibiting retaliation as defined in Appendix B.
14. Prompt Resolution. Inclusion of language that reflects the institution's efforts to pursue the prompt resolution of reports of sexual violence and sexual harassment.
15. Purpose Statement. A statement that indicates sexual violence and sexual harassment are prohibited and expresses the institution's commitment to prevent and promptly and effectively respond to and redress incidents of sexual violence and sexual harassment, and states how such actions support the System and institutional missions.
16. Recordkeeping. A description of how records of reports of sexual violence and sexual harassment will be maintained.
17. Reporting Options and Obligations. Identification of employees to whom or offices to which an individual can report an allegation of sexual violence and sexual harassment, including the U.S. Department of Education, Office for Civil Rights; likewise, identification of employees who are obligated to notify an "Official with Authority" that they have received such a report.
18. Resources. A description of counseling, medical, legal, and other resources for complainants and respondents.
19. Responsible Employees. Identification of those individuals who are considered "responsible employees" as defined in Appendix B. A responsible employee is not necessarily an "Official with Authority" to institute corrective measures on behalf of the university.
20. Roles and Duties of University Employees. Identification of the role and responsibility of institutional employees regarding reporting, prevention, and response involving allegations of sexual violence and sexual harassment.

21. Sanctions. Identification of potential sanctions for students and employees who are found responsible under the policy.
22. Scope Statement. Provision of a scope statement covering all institutional students and employees in university sponsored and supported activities.
23. Supportive Measures. Information for students and employees concerning the availability of academic and employment supportive measures related to the individual as a complainant or respondent.
24. Title IX Committee. Provision for a campus Title IX Committee, tasked with the responsibility to, among other things, support the efforts of the Title IX Coordinator, implement the institutional Sexual Violence and Sexual Harassment policy, perform assessment, and address campus climate and culture issues.
25. Title IX Coordinator. Identification of the name and contact information for the institutional Title IX Coordinator and any Deputy Title IX Coordinators.

## Related Regent Policies and Applicable Laws

- RPD 14-3, “Equal Opportunities in Education: Elimination of Discrimination Based on Gender”
- RPD 14-6, “Discrimination, Harassment, and Retaliation”
- RPD 14-7, “Implementation of Statute on Discrimination Against Students”
- RPD 14-8, “Consensual Relationships”
- Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.; 34 C.F.R. Part 106)
- § 36.11(22), Wis. Stats., Orientation Program; Information on Sexual Assault and Harassment
- Violence Against Women Act (1994) 42 U.S.C. §§ 1371-14040

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

*History: Res. 2297, adopted 12/05/1980, created Regent Policy Document 80-8. Res. 2384, adopted 05/08/1981, created Regent Policy Document 81-2, replacing Regent Policy Document 80-8. Res. 3758, adopted 04/10/1987, amended Regent Policy Document 81-2; subsequently renumbered 14-2. Res. 10786, adopted 12/08/2016, amended Regent Policy Document 14-2. Res. 11475, adopted 08/05/2020, amended Regent Policy Document 14-2. Res. Xxxxx, adopted, amended Regent Policy Document 14-2.*

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

### UW-[institution] Sexual Violence and Sexual Harassment Policy

#### **Policy Statement**

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

#### **Purpose and Scope of Policy**

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

This policy applies to:

- A. University sponsored and supported activities held both on and off campus, including those held in other municipalities, states, and nations.
- B. All students while they are on campus or if their off-campus conduct meets any of the following criteria:
  1. The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.
  2. The conduct indicates that the student presented or may present a danger or threat to the health or safety of self or others.
  3. The conduct demonstrates a pattern of behavior that seriously impairs the University's ability to fulfill its teaching, research, or public service missions.
- C. All other members of the University community (including, but not limited to employees, volunteers, visitors, guests, contractors, and third-party vendors) while

they are on campus or engaged in activities associated with University sponsored and supported activities.

## **Title IX Statement**

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

### **I. Definitions**

(See Appendix B).

### **II. Role and Duties of University Officials and Employees**

#### **A. Title IX Coordinator**

The duties of the UW-\_\_\_\_\_ Title IX Coordinator are described in the institutional position description. Those duties include:

- receiving reports of sexual violence and sexual harassment
- maintaining appropriate records
- providing or supporting the provision of appropriate education and training
- maintaining ongoing communication with any Deputy Title IX Coordinators and the Title IX Committee
- overseeing and/or investigating allegations of sexual violence and sexual harassment, as appropriate
- coordinating the effective implementation of supportive measures
- ensuring that applicable policies, resources, and other information is up-to-date and properly disseminated.

The duties of the Title IX Coordinator will be guided by principles of trauma-informed care and ensuring equity and due process for complainants and respondents.

#### **B. Title IX Committee**

The Title IX committee at UW-\_\_\_\_\_ meets on a \_\_\_\_\_ [*Insert period of time, such as monthly*] basis to:

- discuss policy implementation and revision
- assess the effectiveness of trainings and educational programming
- address campus climate issues
- provide guidance to the Title IX Coordinator.

The following are offices represented on this committee:

*[Identify, refer to Title IX Committee Bylaws].*

### C. Responsible Employees

UW-\_\_\_\_\_ has designated individuals with the following titles as “Responsible Employees” under this policy:

*[Identify].*

Responsible Employees are not necessarily “Officials with Authority” to institute corrective measures on behalf of the university. These individuals should be properly trained to do the following:

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

### D. Official with Authority

UW-\_\_\_\_\_ has designated individuals with the following titles as “Officials with Authority,” under this policy, as they have the authority to institute corrective measures on behalf of the university. All Officials with Authority are also Responsible Employees.

### E. All Employees

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

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

All employees must comply with Executive Order 54 which requires that university employees report incidents of child abuse and neglect which they observe or learn of in the course of their employment. Such reports must be personally and immediately made to

law enforcement or the county department of social services or human services.  
[[https://docs.legis.wisconsin.gov/code/executive\\_orders/2011\\_scott\\_walker/2011-54.pdf](https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf)].

### III. Reporting an Incident of Sexual Violence or Sexual Harassment

#### A. Reporting Options

Those who have been subjected to an incident of sexual violence or sexual harassment have several options for reporting the incident:

1. The individual may elect not to report or may only seek confidential services.
2. The individual may report information to the campus Title IX Coordinator or other designated reporting office:

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

3. The individual may report information to campus law enforcement:

*[Name, contact information of campus law enforcement].*

4. The individual may report information to local law enforcement:

*[Name, contact information of local law enforcement].*

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

Individuals have the option to file a complaint with the **U.S. Department of Education, Office for Civil Rights**: <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

#### B. Amnesty

Individuals, including complainants, respondents, and witnesses, who have made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing regarding incidents of sexual harassment or sexual violence generally will not be issued citations by campus law enforcement or subject to disciplinary sanctions for alcohol violations arising out of the same facts and circumstances of the alleged incident unless the institution determines that the violation was egregious, and/or placed the health or safety of any person at risk, and was beyond the amnesty provided by state law. (See <https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>.)

### C. Confidentiality

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

### D. Resources and Supportive Measures

#### 1. Supportive Measures

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

#### 2. Resources

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

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

### E. Procedures

#### 1. University Procedures:

- a) When a report is made to the *Title IX Coordinator* alleging that a *student* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. *[Link to Chapter UWS 17, Wis. Admin. Code].*
- b) When a report is made to the *Title IX Coordinator* alleging that a *faculty member* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. *[Link to Chapters UWS 4 and 7, Wis. Admin. Code and UWS 6, Wis. Admin. Code].*
- c) When a report is made to the *Title IX Coordinator* alleging that a *member of the academic staff* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. *[Link to Chapters UWS 11 and 13, Wis. Admin. Code].*



- d) When a report is made to the *Title IX Coordinator* alleging that a *member of the university staff* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [[Link to Appendix C](#)].
- e) When a report is made to the *Title IX Coordinator* alleging that *any other university employee who does not fall into any of the above categories* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [[Link to Appendix C](#)].

## 2. Title IX Misconduct Informal Resolution Procedures

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

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

The university may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Title IX misconduct. Similarly, the university may not require the parties to participate in an informal resolution process to address Title IX misconduct and may not offer an informal resolution process for Title IX misconduct unless a formal complaint is filed. The

requirements of this section do not apply to allegations of sexual harassment and sexual violence that do not constitute Title IX misconduct.

### 3. Law Enforcement Procedures:

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

[Link to campus law enforcement procedures].

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

[Link to local law enforcement procedures].

## F. Prompt Resolution

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

### 1. Time Frames

Best efforts will be made for the university to complete an informal resolution process or an investigation of a complaint within 90 calendar days. The 90 calendar day time frame and any other time frame set by the university related to appeals and conclusion of the grievance process may be extended for good cause. Good cause may include but is not limited to considerations such as:

- the absence of a party or party's advisor or witness
- concurrent law enforcement activity
- the need for language assistance or accommodation of disabilities.

The complainant and the respondent will be notified in writing of an extension for good cause.

### 2. Potential Sanctions

The procedures identified above provide for disciplinary action against employees and students who are found responsible for violating a university policy. For students, such sanctions include those listed in UWS 17. Employee sanctions may include measures that range from a written reprimand through dismissal. Vendors and guests may be subject to other sanctions.

### 3. Notice of Outcome

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

#### G. Prohibition Against Retaliation

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

Those who believe they have been subjected to retaliation under this section may report the allegations to the Title IX Coordinator or Deputy. Those who believe they have been subjected to retaliation that would also constitute a crime may report to campus law enforcement or campus safety office. (See contact information above)

#### H. False Information

Any person who knowingly makes false statements or knowingly provides false information when reporting a violation of this policy or during the course of any investigation or disciplinary proceeding pursuant to this policy may be subject to disciplinary action. The fact that a complaint of sexual harassment or sexual violence did not result in a finding of wrongdoing in a law enforcement or University disciplinary proceeding will not, by itself, be a basis for determining that this provision has been violated.

### **IV. Education and Training**

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

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

All Title IX personnel, including the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution, shall receive training on the definitions of sexual violence and sexual harassment, scope of the institution's program or activity, how to conduct an investigation and grievance process, how to serve impartially, and how to avoid conflicts of interest and bias. All decision-makers shall receive training on any technology to be used at a live hearing, and on issues of relevance of questions and

evidence. All investigators shall receive training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence.

## **V. Record Keeping and Data Collection**

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

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

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

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

## **VI. Assessment**

The (*insert campus office name*) will conduct a study that seeks to gather data and information concerning sexual violence and sexual harassment. Efforts will be made to conduct such a study once every \_\_\_ years. All students and employees are encouraged to participate. The Title IX office will also work to design methods for effectively evaluating the outcomes of campus training and educational programming. It is imperative that UW System institutions proactively integrate empirically informed assessment and evaluations into sexual violence and sexual harassment prevention and awareness programs to measure whether they are achieving the intended outcomes.

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

**Advisor:** An individual who assists a complainant or respondent in any grievance proceeding or related meetings. This individual may or may not be an attorney.

**Clear and convincing evidence:** Information that would persuade a reasonable person to have firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."

**Complainant:** 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 policy.

**Confidential Employee:** Any employee who is a licensed medical, clinical, or mental health professional when acting in that role in the provision of services to a patient or client who is a university student or employee. A Confidential Employee will not report specific information concerning a report of sexual violence or sexual harassment received by that Employee in the Employee's professional capacity unless with the consent of the reporting individual or unless required by the Employee's license or by law.

**Confidential Resource:** Individuals or agencies in the community, whose professional license, or certification permits that individual or agency to preserve the confidentiality of the patient or client.

**Consent:** Words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation. 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.

**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.

**Domestic Violence:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected

from that person's acts under the domestic or family violence laws of Wisconsin as per ss. 813.12(1)(am) and 968.075, Stats.

**Employee:** Any individual who holds a faculty, academic staff, university staff, limited, student employment, employee-in-training, temporary, or project appointment. (See, e.g., UW System Administrative Policy 1225 (formerly GEN 0), General Terms and Definitions (<https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/>))

**Education Program or Activity:** For purposes of 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.

**Executive Order 54:** Executive Order issued by Governor Walker in 2011 requiring that university employees report incidents of child abuse and neglect which they observe or learn of in the course of their employment. Such reports must be personally and immediately made to law enforcement or the county department of social services or human services.

([https://docs.legis.wisconsin.gov/code/executive\\_orders/2011\\_scott\\_walker/2011-54.pdf](https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf))

**Formal Title IX complaint:** For the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against a respondent 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.

**Incapacitation:** 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.

**Official with Authority:** Any official of the university who has the authority to institute corrective measures on behalf of the university.

**Office for Civil Rights:** The U.S. Department of Education office that is responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other education-based discrimination acts.

<http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

**Preponderance of the Evidence:** Information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than “clear and convincing evidence” and is the minimum standard for a finding of responsibility.

**Respondent:** An individual who has been reported to be the perpetrator of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy.

**Responsible Employee:** Any employee (other than a “confidential resource”) who has been given the duty of reporting incidents of sexual misconduct by students or employees to the Title IX Coordinator or other appropriate school designee.

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

**Sex Discrimination:** Discrimination on the basis of sex or gender. Sexual harassment and sexual assault are forms of sex discrimination. [See [20 USC §§ 1681-1688](#)]

**Sexual Assault:** An offense that meets 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 the complainant, without the consent of the complainant.
- b) **Fondling:** The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the complainant’s age or because of the complainant’s 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 complainant who is under the statutory age of consent as per s. 948.02, Stats.

**Sexual Exploitation:** Attempting, taking or threatening to take, nonconsensual sexual advantage of another person. Examples include:

- a) Engaging in the following 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.

**Sexual Harassment:** 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 objectionably 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.

**Sexual Violence:** The phrase, as used in this policy, refers to incidents involving sexual assault, dating violence, domestic violence, stalking, and sexual exploitation.

**Stalking:** Engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

**Student:** Any person who is registered for study in a University of Wisconsin System institution for the academic period in which the alleged act of sexual violence or sexual harassment occurred, or between academic periods for continuing students. [See [Chapter UWS 17.02\(14\), Wis. Admin. Code.](#)]

**Title IX:** Title IX of the Education Amendments of 1972 (20 U.S.C. sec. 1681 et seq.; 34 C.F.R. Part 106)(as amended) is a federal law that states, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." [20 U.S.C. § 1681\(a\).](#)

**Title IX Misconduct:** A report of sexual harassment or sexual violence under this policy will be considered Title IX misconduct when a formal Title IX complaint (as defined in this section) is either filed by a complainant or signed by the Title IX Coordinator and the alleged conduct meets the definition of sexual harassment, sexual assault, dating violence,

domestic violence, or stalking as defined in 34 C.F.R. 106.30, occurred within a university “education program or activity” (as defined in this section) and occurred against the complainant while in the United States; and the complainant is participating in or attempting to participate in a university education program or activity at the time they file the formal complaint. Title IX misconduct cases will follow procedures as detailed in Chs. [UWS 4.11-24](#) (faculty), [UWS 11.13-26](#) (academic staff), [UWS 17.16-21](#) (students), and Appendix C (university employees other than faculty or academic staff).

**Title IX Coordinator (and Deputies):** An employee designated to coordinate compliance with Title IX, who plays an important role in an institution’s efforts to ensure equitable opportunity for all students and employees, and who works with school officials to remind the school community that students and employees must have equal access to all programs.

**Trauma-Informed Care:** Trauma-informed care reflects an understanding of trauma and emphasizes creating services and programs that are sensitive and directly responsive to the trauma that many victims and survivors experience following a violent crime. Trauma-informed care programs identify and limit potential triggers to reduce their re-traumatization and protect their mental and emotional health.

<https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers>.

Trauma-informed care is an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma. Trauma-informed care also emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors rebuild a sense of control and empowerment. *See also:*

<http://www.traumainformedcareproject.org/resources/SAMHSA%20TIC.pdf> and [http://www.nsvrc.org/sites/default/files/publications\\_nsvrc\\_guides\\_building\\_cultures-of-care.pdf](http://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_building_cultures-of-care.pdf).

A process that employs trauma-informed care accounts for the impact of trauma but does not recognize symptoms of trauma as evidence that a particular incident did or did not occur.

**Violence Against Women Act (VAWA):** Federal law enacted in 1994, which promotes the investigation and prosecution of violent crimes against women, among other objectives. Recently, it enacted amendments to the Clery Act [[42 U.S.C. §§ 13701-14040](#)], through the Campus Sexual Violence Elimination Act (SaVE) provision, Section 304.

## **RPD 14-2 Appendix C: Policy for Investigation and Resolution of Formal Title IX Complaints Against University Employees Other Than Faculty and Academic Staff**

### **Application of this policy.**

This policy applies to the investigation and resolution of formal Title IX complaints filed against university employees other than faculty and those academic staff employees who have passed their initial evaluation period. This includes employees who otherwise do not have the right to a formal disciplinary process.

The disciplinary process in Chapter UWS 4 applies to faculty employees and the process in Chapter UWS 11 applies to academic staff employees. The university may discipline an employee up to and including dismissal for cause for Title IX misconduct. The disciplinary process for employee sexual misconduct that is outside the scope of Title IX, and related definitions, are found in separate university policies.

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.

The employee is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process. The university may dismiss or discipline an employee for Title IX misconduct only after due notice and hearing. The burden of proof is on the university administration.

### **Definitions.**

As used in this policy, the following terms shall have the meaning given below:

- (1) **"Complainant"** means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.

- (2) **“Consent”** means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definition of sexual assault. 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.
- (3) **“Consult”** or **“consulting”** means thoroughly reviewing and discussing the relevant facts and discretionary issues.
- (4) **“Dating violence”** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (5) **“Domestic violence”** means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of Wisconsin as per ss. 813.12(1)(am) and 968.075, Stats.
- (6) **“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 respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.
- (7) **“Formal 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 employee 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.

- (8) **"Incapacitation"** means the state of being unable to physically or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.
- (9) **"Preponderance of the evidence"** means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."
- (10) **"Respondent"** means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.
- (11) **"Sexual assault"** means an offense that meets any of the following definitions:
- (1) "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.
  - (2) "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.
  - (3) "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.
  - (4) "Statutory Rape" means sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.
- (12) **"Sexual harassment"** means conduct on the basis of sex that satisfies any of the following:
- a) **Quid pro quo sexual harassment:** When 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) **Hostile environment sexual harassment:** 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.
- (13) **“Stalking”** means engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.
- (14) **“Title IX misconduct”** means sexual assault, stalking, dating violence, or domestic violence as defined in this section and sexual harassment as defined in this section.

### **Disciplinary Sanctions.**

The disciplinary sanctions that may be imposed for misconduct under this policy range from a written reprimand through dismissal.

### **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 employee 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 employee and complainant in writing.
- (4) Within 20 days of receipt of the notice of dismissal, the complainant or employee may appeal the dismissal by filing a written appeal with the chancellor's designee (hereinafter "chancellor's designee"). The complainant or employee 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's designee shall provide the employee and complainant the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor's designee shall simultaneously issue a decision to the complainant and the employee within 30 days of receipt of a written appeal. The chancellor's designee'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 employee under other administrative rules or university policies.

### **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 employee 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 employee 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 employee is presumed not responsible for the alleged violation until the disciplinary process finds otherwise.
  - d) The employee and complainant have the right to an advisor of their choice.
  - e) The employee and complainant have the right to inspect and review the evidence.
  - f) Information about any code of conduct rules which prohibit the employee 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 employee 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 employee or complainant to discuss the allegations under investigation or to gather and present relevant evidence.
  - c) Provide the employee 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 employee 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 employee, complainant, or other source, so that the employee 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 employee'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 employee or complainant, unless the university obtains the employee'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.

### **Review of evidence.**

- (1) Prior to completion of the final investigative report, the investigator shall send to the employee and complainant and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the employee 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 employee, complainant, or other source, to permit the employee and complainant to meaningfully respond to the evidence prior to conclusion of the investigation.
- (2) The employee and the complainant shall have at least 10 days to submit a written response to the evidence. The investigator will consider any written responses prior to completion of the final investigative report.

### **Final Investigative Report.**

The investigator shall create a final investigative report that fairly summarizes relevant evidence and send the report to the employee, 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 employee and complainant. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless the employee and the complainant both waive, in writing, the right to such a hearing.

### **Hearing Examiner or Hearing Committee.**

- (1) The chancellor of each university shall designate a Title IX conduct hearing examiner or hearing committee to hear employee dismissal and discipline cases. The university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

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

**Adequate Due Process.**

- (1) A fair hearing for an employee 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 employee to be heard on their own behalf.
  - (d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The employee'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 employee does not have an advisor, the university shall provide the employee, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the employee. The advisor may be an attorney.
  - (e) A right to confront and cross-examine adverse witnesses. The employee's or complainant's advisor shall conduct cross examination directly, orally, and in real time. The employee and the complainant may not personally conduct cross-examination. If the employee, 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 employee complainant, respondent, 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 employee, 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 employee and the complainant, interviews with the employee, 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 employee to appeal.
- (h) Admissibility of evidence governed by s. [227.45 \(1\) to \(4\)](#), Stats. Only relevant questions may be asked of the employee, 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 employee 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 employee and are offered to prove consent.
- (i) Upon the employee's request, the university shall provide for the hearing to occur with the employee and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the employee, and the complainant to simultaneously see and hear witnesses answering questions.

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

### **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 employee 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 employee or complainant requests an open hearing, in which case it shall be open unless otherwise precluded by law..

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 employee, disqualify any one of its members for caused 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 employees equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures.

(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 outlined in this appendix.

(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.

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

(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 employee or the complainant, an advisor, or a witness.
3. To provide language assistance or accommodation of disabilities.

4. To accommodate concurrent law enforcement activity.

### **Hearing Committee or Hearing Examiner Findings and Recommendations to the Chancellor's Designee**

The hearing committee or hearing examiner shall simultaneously send to the chancellor's designee, to the complainant, and to the employee concerned, within 30 days after 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.

### **Chancellor's Designee's Decision.**

- (1) Within 10 days after receipt of the record and findings and recommendations from the hearing examiner or hearing committee, the complainant and the employee may submit written exceptions. The chancellor's designee shall review those materials and their decision shall be based on the record created before the hearing examiner or hearing committee without consideration of any new evidence submitted by the complainant or the employee. The chancellor's designee shall prepare a written decision within 20 days after the deadline of submission for the written exceptions by the complainant or the employee. If the chancellor's designee's proposed decision differs substantially from those recommendations, the chancellor's designee shall promptly consult the hearing examiner or hearing committee and provide the hearing examiner or hearing committee with a reasonable opportunity for a written response prior to making a decision.
- (2) The chancellor's designee may adopt the hearing examiner's or hearing committee's findings and recommendations as the chancellor's designee's decision. The chancellor's designee shall explain in the decision any substantial differences from those findings and recommendations.
- (3) The chancellor's designee's decision shall be simultaneously sent to the complainant, employee, and to the hearing examiner or hearing committee within 45 days of the chancellor's designee's receipt of the hearing examiner's or hearing committee's materials.

### **Appeal to Chancellor.**

- (1) The employee or the complainant may appeal the dismissal of a formal Title IX complaint or the chancellor designee's decision by filing a written appeal with the chancellor within 20 days of receiving the decision.
- (2) The employee or complainant may appeal to the chancellor on the following bases:
  - (a) Procedural irregularity that affected the outcome of the matter.

(b) New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter.

(c) The Title IX coordinator, investigator(s), chancellor's designee, or the hearing examiner or hearing committee members had a conflict of interest or bias for or against the employee or complainant, or against complainants and respondents generally, that affected the outcome. The complainant and the employee shall be notified of any appeal to the chancellor.

(2) The complainant and the respondent shall be notified of any appeal to the chancellor.

(3) The chancellor shall permit the complainant and employee to file a written statement on the appeal. The chancellor shall review the appeal based on the record before the hearing examiner or hearing committee. The complainant and employee shall be simultaneously provided the final written decision of the chancellor, which shall include the rationale for the decision.

### **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 employee, may impose a lesser disciplinary action, or may find in favor of the employee. The employee 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 employee. This decision shall be deemed final unless the board, in cases involving a university staff respondent, upon request of the employee 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 decision shall be simultaneously sent to the employee 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.

### **Appeal to the Board of Regents of dismissal of university staff respondent.**

**(1)** In matters where a university staff member is the respondent, the university staff member or complainant may file an appeal of the chancellor's decision to dismiss the staff member to the Board of Regents for the University of Wisconsin System ("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 university staff member and complainant an opportunity for filing written exceptions to the chancellor's decision, and for oral arguments, unless the university 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 university staff member or the complainant requests an open hearing, unless otherwise precluded by law.

**(2)** The university 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 university 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 university 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 a university staff member shall specify the effective date of the dismissal.

### **Administrative Leave.**

Pending the final decision on the allegations in the formal complaint, the employee/respondent may be placed on administrative leave.

## Regent Policy Document 14-2 (*formerly 81-2*), Sexual Violence and Sexual Harassment

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### SCOPE

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

### PURPOSE

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

### POLICY STATEMENT

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

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

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



## OVERSIGHT, ROLES, AND RESPONSIBILITIES

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

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

1. Amnesty. A provision to exempt sexual violence or sexual harassment complainants, respondents, and witnesses from receiving citations or being subjected to the student disciplinary process for underage consumption of alcohol under specified circumstances (<https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>).
2. Assessment. A description of the methodology for how the institution will assess the efficacy of its policy and educational efforts undertaken as part of this policy.
3. Collection of Data. In accordance with state and federal law, a statement that includes statistics on the number of reports received by employees alleging sexual assault of a student shall be reported in the UW System Sexual Assault Reports consistent with § 36.11(22), Wis. Stats., and the federal Jeanne Clery Act.
4. Confidentiality. Identification of employees or affiliates who may maintain in confidence any report of sexual violence or sexual harassment. Limitations or barriers to confidentiality of other employees should be addressed.
5. Definitions. Relevant words and phrases used in the policy should be defined consistent with applicable System rules and policies. (Definitions are included in **Appendix B**):
6. Education/Training. Identification of mandatory education and training concerning sexual violence and sexual harassment.
7. False Information. Information about response and consequences when an individual knowingly makes a material misstatement of fact in connection with a report of sexual violence or sexual harassment. The information should indicate the filing of a complaint that does not result in a finding of prohibited conduct, alone, is not evidence of intent to file a false report.
8. Informal Resolution. A description of the informal Title IX misconduct resolution process, if offered.

9. Office for Civil Rights Complaint. A description of how individuals can file a complaint with the U.S. Department of Education, Office for Civil Rights under Title IX.
10. Official with Authority: Identification of those individuals who are considered officials with authority to institute corrective measures on behalf of the university.
11. Policy Statement. A statement expressing the institution's commitment to promoting an environment free from incidents of sexual violence and sexual harassment.
12. Procedures. Reference to, or inclusion of, institutional policies governing procedures for reporting allegations of sexual violence and sexual harassment, including information for reporting to campus and local police as well as for filing a formal Title IX complaint.
13. Prohibition against Retaliation. A statement explicitly prohibiting retaliation as defined in Appendix B.
14. Prompt Resolution. Inclusion of language that reflects the institution's efforts to pursue the prompt resolution of reports of sexual violence and sexual harassment.
15. Purpose Statement. A statement that indicates sexual violence and sexual harassment are prohibited and expresses the institution's commitment to prevent and promptly and effectively respond to and redress incidents of sexual violence and sexual harassment, and states how such actions support the System and institutional missions.
16. Recordkeeping. A description of how records of reports of sexual violence and sexual harassment will be maintained.
17. Reporting Options and Obligations. Identification of employees to whom or offices to which an individual can report an allegation of sexual violence and sexual harassment, including the U.S. Department of Education, Office for Civil Rights; likewise, identification of employees who are obligated to notify an "Official with Authority" that they have received such a report.
18. Resources. A description of counseling, medical, legal, and other resources for complainants and respondents.
19. Responsible Employees. Identification of those individuals who are considered "responsible employees" as defined in Appendix B. A responsible employee is not necessarily an "Official with Authority" to institute corrective measures on behalf of the university.
20. Roles and Duties of University Employees. Identification of the role and responsibility of institutional employees regarding reporting, prevention, and response involving allegations of sexual violence and sexual harassment.

21. Sanctions. Identification of potential sanctions for students and employees who are found responsible under the policy.
22. Scope Statement. Provision of a scope statement covering all institutional students and employees in university sponsored and supported activities.
23. Supportive Measures. Information for students and employees concerning the availability of academic and employment supportive measures related to the individual as a complainant or respondent.
24. Title IX Committee. Provision for a campus Title IX Committee, tasked with the responsibility to, among other things, support the efforts of the Title IX Coordinator, implement the institutional Sexual Violence and Sexual Harassment policy, perform assessment, and address campus climate and culture issues.
25. Title IX Coordinator. Identification of the name and contact information for the institutional Title IX Coordinator and any Deputy Title IX Coordinators.

## Related Regent Policies and Applicable Laws

- RPD 14-3, “Equal Opportunities in Education: Elimination of Discrimination Based on Gender”
- RPD 14-6, “Discrimination, Harassment, and Retaliation”
- RPD 14-7, “Implementation of Statute on Discrimination Against Students”
- RPD 14-8, “Consensual Relationships”
- Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.; 34 C.F.R. Part 106)
- § 36.11(22), Wis. Stats., Orientation Program; Information on Sexual Assault and Harassment
- Violence Against Women Act (1994) 42 U.S.C. §§ 1371-14040

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

*History: Res. 2297, adopted 12/05/1980, created Regent Policy Document 80-8. Res. 2384, adopted 05/08/1981, created Regent Policy Document 81-2, replacing Regent Policy Document 80-8. Res. 3758, adopted 04/10/1987, amended Regent Policy Document 81-2; subsequently renumbered 14-2. Res. 10786, adopted 12/08/2016, amended Regent Policy Document 14-2. Res. 11475, adopted 08/05/2020, amended Regent Policy Document 14-2. Res. Xxxxx, adopted, amended Regent Policy Document 14-2.*

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

### UW-[institution] Sexual Violence and Sexual Harassment Policy

#### Policy Statement

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

#### Purpose and Scope of Policy

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

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This policy applies to:

- A. University sponsored and supported activities held both on and off campus, including those held in other municipalities, states, and nations.
- B. All students while they are on campus or if their off-campus conduct meets any of the following criteria:
  1. The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.
  2. The conduct indicates that the student presented or may present a danger or threat to the health or safety of self or others.
  3. The conduct demonstrates a pattern of behavior that seriously impairs the University's ability to fulfill its teaching, research, or public service missions.
- C. All other members of the University community (including, but not limited to employees, volunteers, visitors, guests, contractors, and third-party vendors) while

they are on campus or engaged in activities associated with University sponsored and supported activities.

### **Title IX Statement**

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

### **I. Definitions**

(See Appendix B).

### **II. Role and Duties of University Officials and Employees**

#### **A. Title IX Coordinator**

The duties of the UW-\_\_\_\_\_ Title IX Coordinator are described in the institutional position description. Those duties include:

- receiving reports of sexual violence and sexual harassment
- maintaining appropriate records
- providing or supporting the provision of appropriate education and training
- maintaining ongoing communication with any Deputy Title IX Coordinators and the Title IX Committee
- overseeing and/or investigating allegations of sexual violence and sexual harassment, as appropriate
- coordinating the effective implementation of supportive measures
- ensuring that applicable policies, resources, and other information is up-to-date and properly disseminated.

The duties of the Title IX Coordinator will be guided by principles of trauma-informed care and ensuring equity and due process for complainants and respondents.

#### **B. Title IX Committee**

The Title IX committee at UW-\_\_\_\_\_ meets on a \_\_\_\_\_ *[Insert period of time, such as monthly]* basis to:

- discuss policy implementation and revision
- assess the effectiveness of trainings and educational programming
- address campus climate issues
- provide guidance to the Title IX Coordinator.

The following are offices represented on this committee:

*[Identify, refer to Title IX Committee Bylaws].*

C. Responsible Employees

UW-\_\_\_\_\_ has designated individuals with the following titles as “Responsible Employees” under this policy:

*[Identify].*

Responsible Employees are not necessarily “Officials with Authority” to institute corrective measures on behalf of the university. These individuals should be properly trained to do the following:

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

D. Official with Authority

UW-\_\_\_\_\_ has designated individuals with the following titles as “Officials with Authority,” under this policy, as they have the authority to institute corrective measures on behalf of the university. All Officials with Authority are also Responsible Employees.

E. All Employees

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

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

All employees must comply with Executive Order 54 which requires that university employees report incidents of child abuse and neglect which they observe or learn of in the course of their employment. Such reports must be personally and immediately made to

law enforcement or the county department of social services or human services.  
[\[https://docs.legis.wisconsin.gov/code/executive\\_orders/2011\\_scott\\_walker/2011-54.pdf\]](https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf).

### III. Reporting an Incident of Sexual Violence or Sexual Harassment

#### A. Reporting Options

Those who have been subjected to an incident of sexual violence or sexual harassment have several options for reporting the incident:

1. The individual may elect not to report or may only seek confidential services.
2. The individual may report information to the campus Title IX Coordinator or other designated reporting office:

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

3. The individual may report information to campus law enforcement:

*[Name, contact information of campus law enforcement].*

4. The individual may report information to local law enforcement:

*[Name, contact information of local law enforcement].*

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

Individuals have the option to file a complaint with the **U.S. Department of Education, Office for Civil Rights:** <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

#### B. Amnesty

Individuals, including complainants, respondents, and witnesses, who have made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing regarding incidents of sexual harassment or sexual violence generally will not be issued citations by campus law enforcement or subject to disciplinary sanctions for alcohol violations arising out of the same facts and circumstances of the alleged incident unless the institution determines that the violation was egregious, and/or placed the health or safety of any person at risk, and was beyond the amnesty provided by state law. (See <https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>.)

C. Confidentiality

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

D. Resources and Supportive Measures

1. Supportive Measures

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

2. Resources

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

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

E. Procedures

1. University Procedures:

- a) When a report is made to the *Title IX Coordinator* alleging that a *student* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. *[Link to Chapter UWS 17, Wis. Admin. Code].*
- b) When a report is made to the *Title IX Coordinator* alleging that a *faculty member* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. *[Link to Chapters UWS 4 and 7, Wis. Admin. Code and UWS 6, Wis. Admin. Code].*
- c) When a report is made to the *Title IX Coordinator* alleging that a *member of the academic staff* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. *[Link to Chapters UWS 11 and 13, Wis. Admin. Code].*

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- d) When a report is made to the *Title IX Coordinator* alleging that a *member of the university staff* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Appendix C].
- e) When a report is made to the *Title IX Coordinator* alleging that *any other university employee who does not fall into any of the above categories* has engaged in an act of sexual violence or sexual harassment, the procedures linked here apply. [Link to Appendix C].

## 2. Title IX Misconduct Informal Resolution Procedures

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

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

The university may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Title IX misconduct. Similarly, the university may not require the parties to participate in an informal resolution process to address Title IX misconduct and may not offer an informal resolution process for Title IX misconduct unless a formal complaint is filed. The

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requirements of this section do not apply to allegations of sexual harassment and sexual violence that do not constitute Title IX misconduct.

### 3. Law Enforcement Procedures:

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

[Link to campus law enforcement procedures].

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

[Link to local law enforcement procedures].

## F. Prompt Resolution

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

### 1. Time Frames

Best efforts will be made for the university to complete an informal resolution process or an investigation of a complaint within 90 calendar days. The 90 calendar day time frame and any other time frame set by the university related to appeals and conclusion of the grievance process may be extended for good cause. Good cause may include but is not limited to considerations such as:

- the absence of a party or party's advisor or witness
- concurrent law enforcement activity
- the need for language assistance or accommodation of disabilities.

The complainant and the respondent will be notified in writing of an extension for good cause.

### 2. Potential Sanctions

The procedures identified above provide for disciplinary action against employees and students who are found responsible for violating a university policy. For students, such sanctions include those listed in UWS 17. Employee sanctions may include measures that range from a written reprimand through dismissal. Vendors and guests may be subject to other sanctions.

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### 3. Notice of Outcome

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

#### G. Prohibition Against Retaliation

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

Those who believe they have been subjected to retaliation under this section may report the allegations to the Title IX Coordinator or Deputy. Those who believe they have been subjected to retaliation that would also constitute a crime may report to campus law enforcement or campus safety office. (See contact information above)

#### H. False Information

Any person who knowingly makes false statements or knowingly provides false information when reporting a violation of this policy or during the course of any investigation or disciplinary proceeding pursuant to this policy may be subject to disciplinary action. The fact that a complaint of sexual harassment or sexual violence did not result in a finding of wrongdoing in a law enforcement or University disciplinary proceeding will not, by itself, be a basis for determining that this provision has been violated.

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### **IV. Education and Training**

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

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

All Title IX personnel, including the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution, shall receive training on the definitions of sexual violence and sexual harassment, scope of the institution's program or activity, how to conduct an investigation and grievance process, how to serve impartially, and how to avoid conflicts of interest and bias. All decision-makers shall receive training on any technology to be used at a live hearing, and on issues of relevance of questions and

evidence. All investigators shall receive training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence.

#### **V. Record Keeping and Data Collection**

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

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

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

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

#### **VI. Assessment**

The *(insert campus office name)* will conduct a study that seeks to gather data and information concerning sexual violence and sexual harassment. Efforts will be made to conduct such a study once every \_\_\_ years. All students and employees are encouraged to participate. The Title IX office will also work to design methods for effectively evaluating the outcomes of campus training and educational programming. It is imperative that UW System institutions proactively integrate empirically informed assessment and evaluations into sexual violence and sexual harassment prevention and awareness programs to measure whether they are achieving the intended outcomes.

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

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**Advisor:** An individual who assists a complainant or respondent in any grievance proceeding or related meetings. This individual may or may not be an attorney.

**Clear and convincing evidence:** Information that would persuade a reasonable person to have firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."

**Complainant:** 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 policy.

**Confidential Employee:** Any employee who is a licensed medical, clinical, or mental health professional when acting in that role in the provision of services to a patient or client who is a university student or employee. A Confidential Employee will not report specific information concerning a report of sexual violence or sexual harassment received by that Employee in the Employee's professional capacity unless with the consent of the reporting individual or unless required by the Employee's license or by law.

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**Confidential Resource:** Individuals or agencies in the community, whose professional license, or certification permits that individual or agency to preserve the confidentiality of the patient or client.

**Consent:** Words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation. 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.

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**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.

**Domestic Violence:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected

from that person's acts under the domestic or family violence laws of Wisconsin, as per ss. 813.12(1)(am) and 968.075, Stats.

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**Employee:** Any individual who holds a faculty, academic staff, university staff, limited, student employment, employee-in-training, temporary, or project appointment. (See, e.g., UW System Administrative Policy 1225 (formerly GEN 0), General Terms and Definitions (<https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/>))

**Education Program or Activity:** For purposes of 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.

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**Executive Order 54:** Executive Order issued by Governor Walker in 2011 requiring that university employees report incidents of child abuse and neglect which they observe or learn of in the course of their employment. Such reports must be personally and immediately made to law enforcement or the county department of social services or human services. ([https://docs.legis.wisconsin.gov/code/executive\\_orders/2011\\_scott\\_walker/2011-54.pdf](https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf))

**Formal Title IX complaint:** For the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against a respondent 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.

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**Incapacitation:** 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.

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**Official with Authority:** Any official of the university who has the authority to institute corrective measures on behalf of the university.

**Office for Civil Rights:** The U.S. Department of Education office that is responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other education-based discrimination acts.  
<http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

**Preponderance of the Evidence:** Information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than “clear and convincing evidence” and is the minimum standard for a finding of responsibility.

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**Respondent:** An individual who has been reported to be the perpetrator of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy.

**Responsible Employee:** Any employee (other than a “confidential resource”) who has been given the duty of reporting incidents of sexual misconduct by students or employees to the Title IX Coordinator or other appropriate school designee.

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

**Sex Discrimination:** Discrimination on the basis of sex or gender. Sexual harassment and sexual assault are forms of sex discrimination. [See [20 USC §§ 1681-1688](#)]

**Sexual Assault:** An offense that meets any of the following definitions:

Deleted: the definition of rape, , or as defined below. [20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).]

- a) **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- b) **Fondling:** The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the complainant's age or because of the complainant's 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.

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

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**Sexual Exploitation:** Attempting, taking or threatening to take nonconsensual sexual advantage of another person. Examples include;

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a) Engaging in the following without the knowledge and consent of all participants:

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1. Observing, recording, or photographing private body parts or sexual activity of the complainant.

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2. Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant.

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3. Otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant.

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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.

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c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.

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

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

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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.

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

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**Sexual Harassment:** 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 objectionably 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.

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**Sexual Violence:** The phrase, as used in this policy, refers to incidents involving sexual assault, dating violence, domestic violence, stalking, and sexual exploitation.

**Stalking:** Engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

**Student:** Any person who is registered for study in a University of Wisconsin System institution for the academic period in which the alleged act of sexual violence or sexual harassment occurred, or between academic periods for continuing students. [See [Chapter UWS 17.02\(14\), Wis. Admin. Code.](#)]

**Title IX:** Title IX of the Education Amendments of 1972 (20 U.S.C. sec. 1681 et seq.; 34 C.F.R. Part 106)(as amended) is a federal law that states, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." [20 U.S.C. § 1681\(a\).](#)

**Title IX Misconduct:** A report of sexual harassment or sexual violence under this policy will be considered Title IX misconduct when a formal [Title IX](#) complaint (as defined in this section) is either filed by a complainant or signed by the Title IX Coordinator and the alleged conduct meets the definition of sexual harassment, sexual assault, dating violence,

domestic violence, or stalking as defined in 34 C.F.R. 106.30, occurred within a university “education program or activity” (as defined in this section) and occurred against the complainant while in the United States; and the complainant is participating in or attempting to participate in a university education program or activity at the time they file the formal complaint. Title IX misconduct cases will follow procedures as detailed in Chs. [UWS 4.11-24](#) (faculty), [UWS 11.13-26](#) (academic staff), [UWS 17.16-21](#) (students), and Appendix C (university employees other than faculty or academic staff).

**Title IX Coordinator (and Deputies):** An employee designated to coordinate compliance with Title IX, who plays an important role in an institution’s efforts to ensure equitable opportunity for all students and employees, and who works with school officials to remind the school community that students and employees must have equal access to all programs.

**Trauma-Informed Care:** Trauma-informed care reflects an understanding of trauma and emphasizes creating services and programs that are sensitive and directly responsive to the trauma that many victims and survivors experience following a violent crime. Trauma-informed care programs identify and limit potential triggers to reduce their re-traumatization and protect their mental and emotional health.

<https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers>.

Trauma-informed care is an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma. Trauma-informed care also emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors rebuild a sense of control and empowerment. *See also:*

<http://www.traumainformedcareproject.org/resources/SAMHSA%20TIC.pdf> and [http://www.nsvrc.org/sites/default/files/publications\\_nsvrc\\_guides\\_building\\_cultures-of-care.pdf](http://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_building_cultures-of-care.pdf).

A process that employs trauma-informed care accounts for the impact of trauma but does not recognize symptoms of trauma as evidence that a particular incident did or did not occur.

**Violence Against Women Act (VAWA):** Federal law enacted in 1994, which promotes the investigation and prosecution of violent crimes against women, among other objectives. Recently, it enacted amendments to the Clery Act [[42 U.S.C. §§ 13701-14040](#)], through the Campus Sexual Violence Elimination Act (SaVE) provision, Section 304.

## RPD 14-2 Appendix C: Policy for Investigation and Resolution of Formal Title IX Complaints Against University Employees Other Than Faculty and Academic Staff

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### Application of this policy.

This policy applies to the investigation and resolution of formal Title IX complaints filed against university employees other than faculty and those academic staff employees who have passed their initial evaluation period. This includes employees who otherwise do not have the right to a formal disciplinary process.

The disciplinary process in Chapter UWS 4 applies to faculty employees and the process in Chapter UWS 11 applies to academic staff employees. The university may discipline an employee up to and including dismissal for cause for Title IX misconduct. The disciplinary process for employee sexual misconduct that is outside the scope of Title IX, and related definitions, are found in separate university policies.

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

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- (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.

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The employee is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process. The university may dismiss or discipline an employee for Title IX misconduct only after due notice and hearing. The burden of proof is on the university administration.

### Definitions.

As used in this policy, the following terms shall have the meaning given below:

- (1) **"Complainant"** means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.

(2) **“Consent”** means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definition of sexual assault. 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.

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

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

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

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(6) **“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 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.

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(7) **“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 employee 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.

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

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

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

(11) **"Sexual assault"** means an offense that meets any of the following definitions:

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(1) **"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.

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(2) **"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.

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(3) **"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.

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(4) **"Statutory Rape"** means sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.

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

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a) **Quid pro quo sexual harassment:** *When* 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) **Hostile environment sexual harassment:** 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.

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

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

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### Disciplinary Sanctions.

The disciplinary sanctions that may be imposed for misconduct under this policy range from a written reprimand through dismissal.

### 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:

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

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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:

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

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b) The employee is no longer employed by the university.

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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 employee and complainant in writing.

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(4) Within 20 days of receipt of the notice of dismissal, the complainant or employee may appeal the dismissal by filing a written appeal with the chancellor's designee (hereinafter "chancellor's designee"). The complainant or employee 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's designee shall provide the employee and complainant the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor's designee shall simultaneously issue a decision to the complainant and the employee within 30 days of receipt of a written appeal. The chancellor's designee'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 employee under other administrative rules or university policies.

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**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 employee and the complainant with a notice of investigation. The notice shall include all of the following:

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a) The grievance process, including informal resolution options.

b) The allegations of Title IX misconduct with sufficient detail for the employee 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.

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- c) A statement affirming the employee is presumed not responsible for the alleged violation until the disciplinary process finds otherwise. Deleted: respondent
  - d) The employee and complainant have the right to an advisor of their choice. Deleted: complainant
  - e) The employee and complainant have the right to inspect and review the evidence. Deleted: the respondent  
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  - f) Information about any code of conduct rules which prohibit the employee or the complainant from knowingly making false statements or submitting false information during the disciplinary process. Deleted: and respondent
- (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. Deleted: The complainant and respondent must
- (4) The university's investigator shall do all of the following:
- a) Provide both the employee 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. Deleted: and respondent  
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  - b) Not restrict the ability of either the employee or complainant to discuss the allegations under investigation or to gather and present relevant evidence. Deleted: and respondent
  - c) Provide the employee 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. Deleted: and respondent
  - d) Provide both the employee 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 employee, complainant, or other source, so that the employee and complainant can meaningfully respond to the evidence prior to conclusion of the investigation. Deleted: and respondent  
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- (5) As part of its investigation and disciplinary process, the university may not access, consider, disclose, or otherwise use an employee'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 Deleted: cannot  
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capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the employee or complainant, unless the university obtains the employee's or complainant's voluntary, written consent to do so in relation to the investigation and disciplinary process.

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- (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.

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### Review of evidence.

- (1) Prior to completion of the final investigative report, the investigator shall send to the employee and complainant and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the employee 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 employee, complainant, or other source, to permit the employee and complainant to meaningfully respond to the evidence prior to conclusion of the investigation.

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

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### Final Investigative Report.

The investigator shall create a final investigative report that fairly summarizes relevant evidence and send the report to the employee, 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 employee and complainant. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless the employee and the complainant both waive, in writing, the right to such a hearing.

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at least 10 days prior to a hearing.

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### Hearing Examiner or Hearing Committee.

- (1) The chancellor of each university shall designate a Title IX conduct hearing examiner or hearing committee to hear employee dismissal and discipline cases. The university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

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

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**Adequate Due Process.**

(1) A fair hearing for an employee against whom dismissal or other discipline is sought shall include all of the following;

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(a) Service of written notice of a live hearing on the allegations in the formal complaint at least 10 days prior to the hearing.

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(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.

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(c) A right for the complainant and employee to be heard on their own behalf.

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

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(e) A right to confront and cross-examine adverse witnesses. The employee's or complainant's advisor shall conduct cross examination directly, orally, and in real time. The employee and the complainant may not personally conduct cross-examination. If the employee, 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 employee complainant, respondent, 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 employee, complainant, or witness from the hearing or refusal to answer cross-examination or other questions.

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

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(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:

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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 employee and the complainant, interviews with the employee, the complainant, and witnesses, site visits, methods used to gather evidence, and hearings held.

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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 employee to appeal.

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(h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats. Only relevant questions may be asked of the employee, 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 employee 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 employee and are offered to prove consent.

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

**Deleted:** The hearing may be conducted with all participants physically present in the same location, or at the hearing examiner's or hearing committee's discretion, any or all participants may appear at the hearing virtually, with technology enabling the participants simultaneously to see and hear each other.

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

### **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.

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(b) The standard of proof shall be a preponderance of the evidence.

(c) No employee 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.

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(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.

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(e) The hearing shall be closed unless the employee or complainant requests an open hearing, in which case it shall be open unless otherwise precluded by law.

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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 employee, disqualify any one of its members for caused 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 employees equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures.

(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 outlined in this appendix.

(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.

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

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

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1. The need to investigate evidence as to which a valid claim of surprise is made.

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2. to ensure the presence of the employee or the complainant, an advisor, or a witness.

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3. To provide language assistance or accommodation of disabilities.

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4. To accommodate concurrent law enforcement activity.

**Hearing Committee or Hearing Examiner Findings and Recommendations to the Chancellor's Designee**

The hearing committee or hearing examiner shall simultaneously send to the chancellor's designee, to the complainant, and to the employee concerned, within 30 days after 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.

**Chancellor's Designee's Decision.**

(1) Within 10 days after receipt of the record and findings and recommendations from the hearing examiner or hearing committee, the complainant and the employee may submit written exceptions. The chancellor's designee shall review those materials and their decision shall be based on the record created before the hearing examiner or hearing committee without consideration of any new evidence submitted by the complainant or the employee. The chancellor's designee shall prepare a written decision within 20 days after the deadline of submission for the written exceptions by the complainant or the employee. If the chancellor's designee's proposed decision differs substantially from those recommendations, the chancellor's designee shall promptly consult the hearing examiner or hearing committee and provide the hearing examiner or hearing committee with a reasonable opportunity for a written response prior to making a decision.

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

(3) The chancellor's designee's decision shall be simultaneously sent to the complainant, employee, and to the hearing examiner or hearing committee within 45 days of the chancellor's designee's receipt of the hearing examiner's or hearing committee's materials.

**Appeal to Chancellor.**

(1) The employee or the complainant may appeal the dismissal of a formal Title IX complaint or the chancellor designee's decision by filing a written appeal with the chancellor within 20 days of receiving the decision.

(2) The employee or complainant may appeal to the chancellor on the following bases:

(a) Procedural irregularity that affected the outcome of the matter.

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(b) New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter.

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(c) The Title IX coordinator, investigator(s), chancellor's designee, or the hearing examiner or hearing committee members had a conflict of interest or bias for or against the employee or complainant, or against complainants and respondents generally, that affected the outcome. The complainant and the employee shall be notified of any appeal to the chancellor.

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(2) The complainant and the respondent shall be notified of any appeal to the chancellor.

(3) The chancellor shall permit the complainant and employee to file a written statement on the appeal. The chancellor shall review the appeal based on the record before the hearing examiner or hearing committee. The complainant and employee shall be simultaneously provided the final written decision of the chancellor, which shall include the rationale for the decision.

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#### Chancellor's decision.

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(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 employee, may impose a lesser disciplinary action, or may find in favor of the employee. The employee 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 employee. This decision shall be deemed final unless the board, in cases involving a university staff respondent, upon request of the employee or complainant, grants review based on the record.

The chancellor's decision shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by the complainant or the respondent within fourteen (14) days of the final university decision. If the board of regents grants a review upon the record, it will: ¶  
Notify the complainant and respondent in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome. ¶  
Issue a written decision describing the result of the review and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent. ¶

(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 decision shall be simultaneously sent to the employee 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.

**Appeal to the Board of Regents of dismissal of university staff respondent.**

(1) In matters where a university staff member is the respondent, the university staff member or complainant may file an appeal of the chancellor's decision to dismiss the staff member to the Board of Regents for the University of Wisconsin System ("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 university staff member and complainant an opportunity for filing written exceptions to the chancellor's decision, and for oral arguments, unless the university 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 university staff member or the complainant requests an open hearing, unless otherwise precluded by law.

(2) The university 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 university 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 university 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 a university staff member shall specify the effective date of the dismissal.

**Administrative Leave.**

Pending the final decision on the allegations in the formal complaint, the employee/respondent may be placed on administrative leave.

## **Information Security Update**

### **REQUESTED ACTION**

For information and discussion only.

### **SUMMARY**

Board of Regents Audit Committee Chair requested an update on specific actions that had been jointly directed by Regent President Andrew Petersen and UW System Interim President Tommy Thompson to all UW institutions earlier this year.

Cyberattacks are currently on the rise, both in terms of frequency and severity, and UW System, like many other organizations, is consistently facing persistent threats and responding to these attacks. While UW System is deploying critical, long-term initiatives to upgrade and modernize IT infrastructure and improve IT security, aggressive action steps were directed to immediately improve UW System's cybersecurity posture. A brief status report will be provided regarding the following five lines of effort:

- Information Security Awareness
- Remote Access
- Disaster Recovery
- Security Performance Management
- Accountability

### **Presenter**

- Katherine Mayer, Associate Vice President of Information Security



June 3, 2021

## **INTERNAL CONTROLS AND ENTERPRISE RISK MANAGEMENT**

### **REQUESTED ACTION**

For information and discussion only.

### **SUMMARY**

In 2019, UW System Administration launched an Enterprise Risk Management Initiative. In 2021, this initiative was expanded to include input from each institution. Leadership at each institution engaged in a discussion of top risks facing the UW System and evaluated each risk based on likelihood, impact, and ability to address through internal controls. This exercise will put the UW System in the best position to make decisions regarding strategic priorities and resource allocation in line with greatest risks.

### **Presenter(s)**

- Angela Ryan, Director, Risk Management
- Katie Ignatowski, Chief Compliance Officer

### **BACKGROUND**

Enterprise Risk Management (ERM) is a framework to systematically identify, evaluate, and manage risks to the organization and its business goals and operations.

UW System is a \$6-billion organization with a complex set of risks. Regent Policy Document 1-1 sets forth the shared mission of the UW System and its institutions. In pursuit of the shared mission and the core missions of the doctoral and comprehensive institutions, UW System Administration and the 13 institutions manage many employees, house and feed students, field athletic teams, conduct cutting-edge research, and engage globally. All of these operations bring risks to the system and its institutions.

While there are many risks, there are also many employees who manage risks within their operations. The UW System has systems in place to manage risks including internal

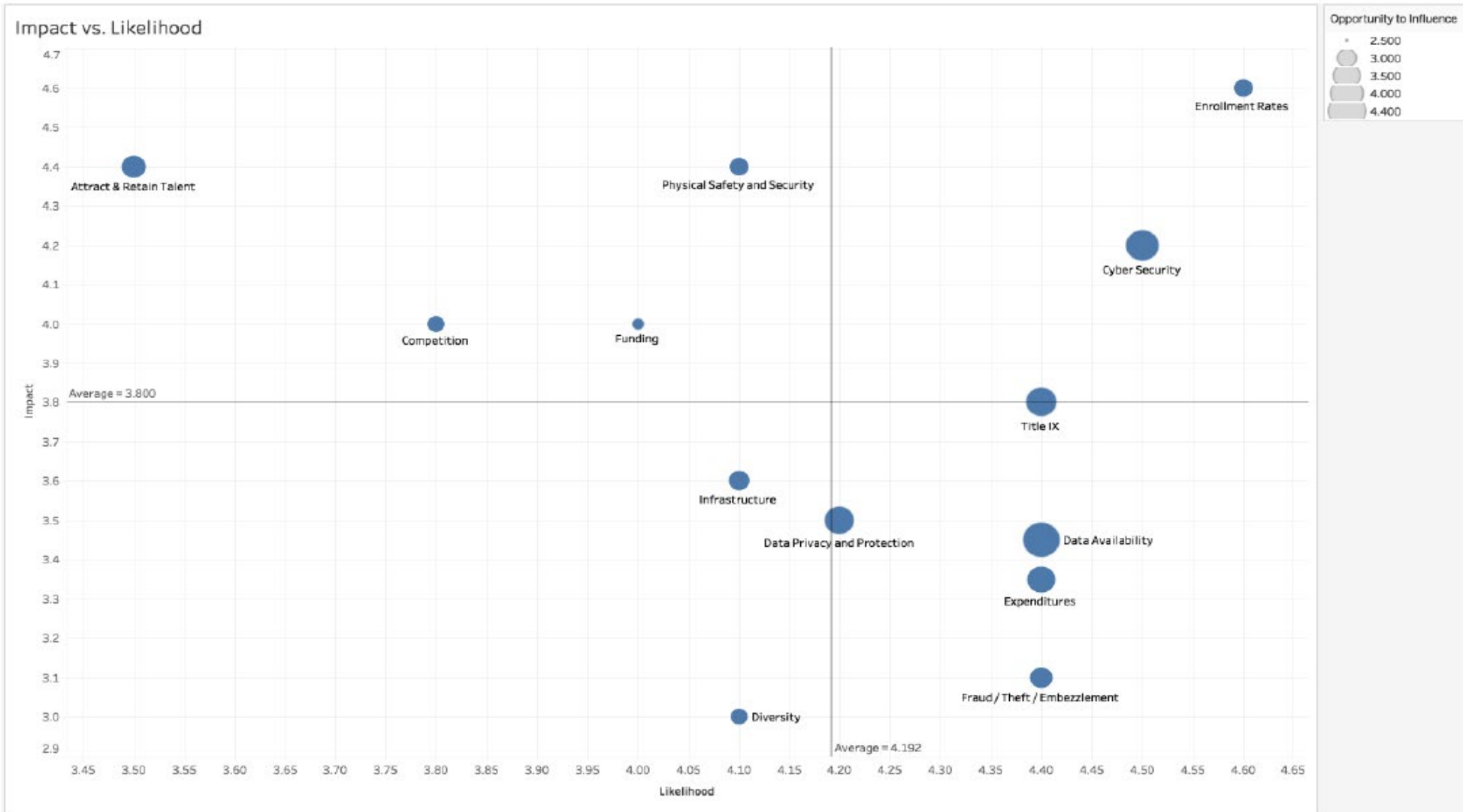
controls, standardized policies, risk transfer through insurance or through the use of suppliers, and health and safety programs. The ERM program creates a process to systematically identify and prioritize the key risks across the operation.

In 2019, UWSA underwent a preliminary survey of top risks facing the System. Four priority risks were selected: physical safety and security, cybersecurity, Title IX, and data availability. A risk mitigation plan was created for each and presented to the Audit Committee of the Board of Regents.

## **ATTACHMENTS**

- A) UW Heat Map.

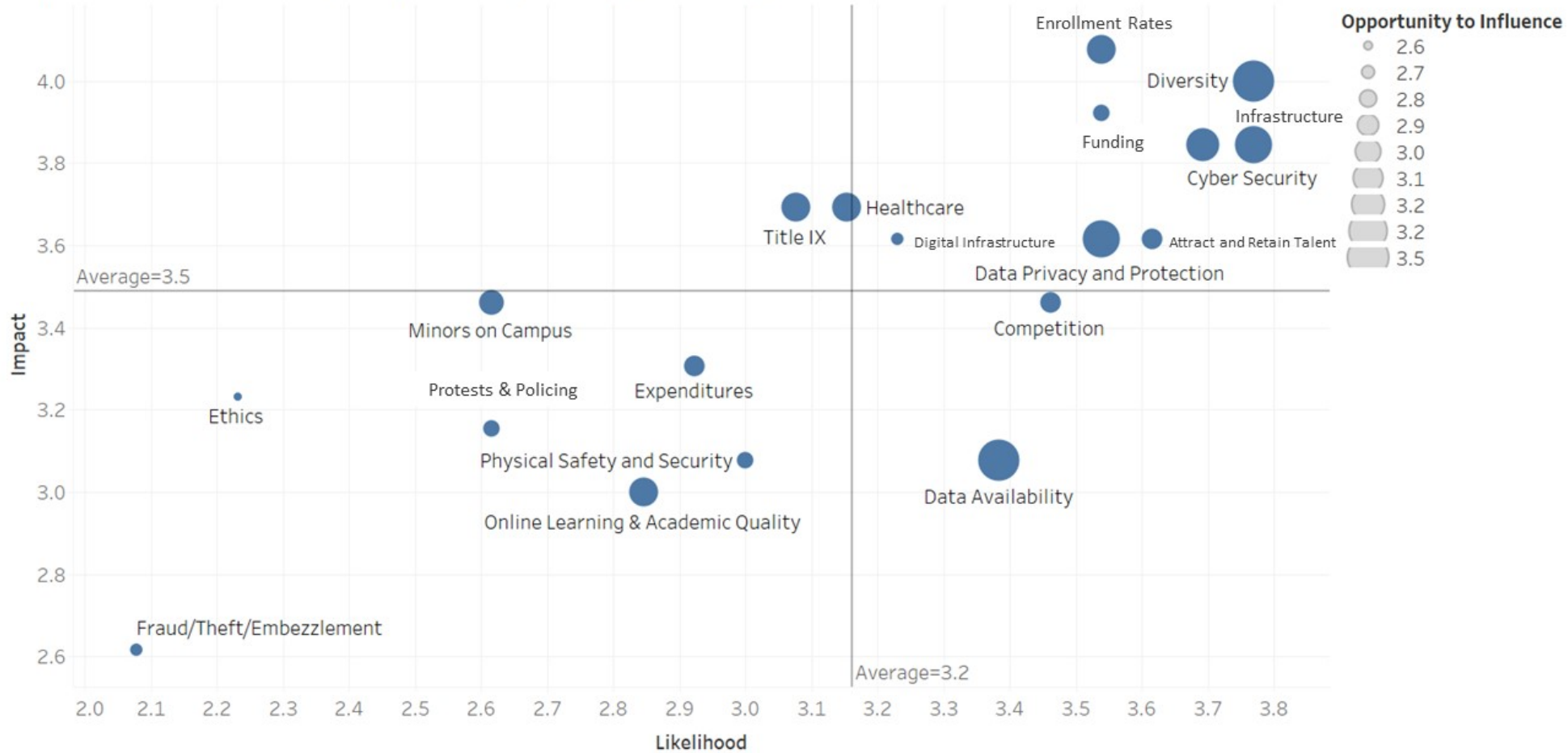
# 2019 UWSA Heat Map



\*Data Availability and Expenditures scores were adjusted slightly to separate the two circles on the heat map

# 2021 UW System (All Institutions) Heat Map

Impact vs. Likelihood (Campus Only Survey Results)



Likelihood vs. Impact. Size shows details about Effectiveness. The marks are labeled by Campus Only Survey Results.