



**SPECIAL MEETING OF THE
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM**

July 8, 2024
2:00 p.m.

To be held by virtual teleconference. For connection details, please visit:
<https://www.wisconsin.edu/regents/videoconference-information/>

AGENDA

1. Calling of the Roll
2. Declaration of Conflicts
3. Capital Planning and Budget Requests
 - A. UW-Milwaukee: Authority to Construct the Chiller Replacement
 - B. UW Oshkosh: Authority to Sell Land and Improvements
 - C. UW-River Falls: Authority to Construct the Central Heating Plant Burner Replacements
 - D. UW System: Authority to Construct 2023-25 Classroom Renovation/Instructional Technology Improvement Program Projects
 - E. UW System: Authority to Construct a Minor Facilities Renewal Project
 - F. UW System: Authority to Construct All Agency Maintenance and Repair Projects

4. Update on Rulemaking Process related to Title IX Changes
 - A. Approval of Administrative Code Emergency and Proposed Permanent Rule Drafts and Notices of Submittal to the Legislative Council Rules Clearinghouse for:
 - Chapter UWS 1, "Definitions of Terms Used in Chs. UWS 1 to 6"
 - Chapter UWS 4, "Procedures for Faculty Dismissal and for Dismissal and Discipline in Title IX Cases"
 - Chapter UWS 7, "Procedures for Faculty Dismissal in Special Cases"
 - Chapter UWS 11, "Procedures for Academic Staff Dismissal and for Discipline and Dismissal in Title IX Cases"
 - Chapter UWS 17, "Student Nonacademic Disciplinary Procedures"
 - B. Approval of Interim Changes to Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment" and Regent Policy Document 14-3, "Equal Opportunities in Education: Elimination of Discrimination Based on Gender"
5. Move into closed session to consider compensation adjustments for chancellors, as permitted by s. 19.85(1)(c), Wis. Stats.
6. Adjourn

Zoom videoconference information and meeting materials can be accessed at <https://www.wisconsin.edu/regents/meetingmaterials> or may be obtained from Megan Wasley, Executive Director, Office of the Board of Regents at (608) 262-2324 or board@wisconsin.edu.

**AUTHORITY TO CONSTRUCT THE CHILLER REPLACEMENT,
UW-MILWAUKEE**

REQUESTED ACTION

Adoption of Resolution 3.A., authorizing the construction of the Chiller Replacement Project at UW-Milwaukee.

Resolution 3.A. That, upon the recommendation of the Chancellor of UW-Milwaukee and the President of the UW System, the UW System Board of Regents authorizes construction of the Chiller Replacement Project for an estimated total project cost of \$24,128,000 (\$20,509,000 Segregated Revenues and \$3,619,000 Program Revenue Supported Borrowing).

SUMMARY

This project replaces Chiller No. 1 and installs a new 4,000-ton electrical centrifugal chiller within the Central Heating and Chilling Plant at UW-Milwaukee. Project work includes upgrading the chilled water and lake water piping, associated ancillary equipment, and necessary utility improvements at the Heating Plant and Lake Water Pump House for facility operation.

Presenter

- Alex Roe, Senior Associate Vice President for Capital Planning and Budget

BACKGROUND

Chiller No. 1 is a 1966 vintage steam-turbine-driven centrifugal unit with an original capacity of 2,750 tons and well beyond its expected useful life. In 2013, the steam turbine was rebuilt, which derated the nameplate capacity to approximately 2,200 tons. The chiller has not run dependably since 2013, operating just a handful of hours since then. Multiple attempts have been made to troubleshoot and repair this unit without success and further analysis and consultation has determined that it is time to completely replace the unit to restore reliable operations. This unit also uses an R-22 refrigerant, which was phased out of use by the Environmental Protection Agency in 2020 due to its negative impacts on the ozone layer, making it illegal to manufacture or import. As the existing inventory/stockpiles

diminish, R-22 will be difficult to find and expensive to purchase, so it should be reclaimed and stored for use on-site if needed in other chiller units. It is also inefficient and more costly to operate and use the steam driven unit in comparison to an electric start model. Campus development plans require the chiller plant have at least one of the two defunct chillers replaced with a unit operating near the original nameplate capacity to reliably meet chilled water demand in the southwest quadrant. The new Chemistry Building is scheduled to be substantially complete in mid-2024, and a future Engineering & Neuroscience facility is already in pre-design.

The lake water system provides condenser (heat rejection) water to the chillers at the central plant. This system requires upgrade and modification to supply adequate lake water condenser flow to maximize capacity at the central plant. The project also provides the required electrical services for the new systems.

Budget/ Schedule

Construction	\$	19,004,300		A/E Selection	Oct 2022
Design	\$	1,398,800		Design Report	Jul 2024
DFDM Mgt	\$	874,200		Approval	Aug 2024
Contingency	\$	2,850,700		Bid Opening	Jan 2025
Equipment	\$	0		Start Construction	Apr 2025
Other Fees	\$	0		Substantial Completion	Sep 2027
TOTAL	\$	24,128,000		Final Completion	Oct 2027

Previous Actions

December 8, 2023
Resolution 12113

Approved All Agency \$4,999,800 (\$4,000,000 General Fund Supported Borrowing and \$999,800 Program Revenue Supported Borrowing) in order to purchase equipment.

August 18, 2022
Resolution 11906

Approved the 2023-25 Capital Budget request, including the UW-Milwaukee Chiller Replacement project for \$24,128,000 (\$20,509,000 General Fund Supported Borrowing and \$3,619,000 Program Revenue Supported Borrowing), be submitted to the Department of Administration and State Building Commission

Related Policies

- Regent Policy Document 19-1, "[University Facilities, Space, and Physical Development Capital Funding and Costs](#)"
- Regent Policy Document 19-15, "[Physical Development Principles](#)"
- Regent Policy Document 19-16, "[Building Program Planning and Approval](#)"

**AUTHORITY TO SELL LAND AND IMPROVEMENTS,
UW OSHKOSH**

REQUESTED ACTION

Adoption of Resolution 3.B., granting authority to sell 1.8604 acres of land and improvements located at 755 Dempsey Trail, Oshkosh, Wisconsin.

Resolution 3.B. That, upon the recommendation of the Chancellor of UW Oshkosh and the President of the UW System, the UW System Board of Regents authorizes the sale of 1.8604 acres of land and improvements located at 755 Dempsey Trail, Oshkosh, Wisconsin.

SUMMARY

In early 2011, UW Oshkosh (UWO) Foundation formed a non-profit partnership, the UWO-Witzel Foundation, to develop the first dry anaerobic batch biodigester in the country. The biodigester was to be located on land proximate to the campus' Campus Services Center partially for the purpose of providing power to the 55,000 square foot building. The biodigester became operational in October 2011.

The UWO-Witzel Foundation transferred ownership of the biodigester equipment to the university in 2019 but retained the land on which it was located. Once the underlying mortgage was satisfied, the land was transferred to the university also.

The projected revenue from selling the heat to the public utility and connecting to campus never materialized while maintenance and repair costs continued. UWO would like to pursue a sale of the asset. A valuation of the assets as a working biodigester and a valuation of the land will be undertaken and analyzed for a sale.

Presenter

- Alex Roe, Senior Associate Vice President for Capital Planning and Budget

BACKGROUND

Anaerobic digestion is a process in which organic matter is broken down by bacteria in an oxygen-free environment. Methane gas forms during the decomposition process and is used as the fuel source to create steam and generate electricity.

The byproduct of an anaerobic digester is a “dry” compost and a liquid fertilizer digestate. The biodigester on UWO campus is fueled through food waste from UWO dining services, yard waste from the City of Oshkosh and Winnebago County, and industrial sources such as potato sludge and waste from breaded food from McCain Foods.

Before transferring the facility to campus, the Foundation sold power purchase agreements to a local utility as a source of revenue. Other revenue generating ideas included bagging and selling compost and other byproducts of the process. Even with the other sources of revenue, the biodigester required additional capital investment to become revenue neutral at a minimum. To fully take advantage of the potential of the biodigester, a great deal of additional capital is required and is greater than the payback. Approximately one year ago, the biodigester was taken off-line.

Related Policies

- Regent Policy Document 13-2, [“Real Property Contracts: Signature Authority and Approval”](#)

ATTACHMENT

A) UW Oshkosh: Proposed Sale of Land and Improvements Map



Sources: UW System Administration,
State of Wisconsin, Wisconsin State
Cartographers Office,
US Census Bureau

This map is for reference purposes only.

UW Oshkosh: Proposed Sale of Land and Improvements

- Proposed Sale Parcel
- Campus Building
- UW Property
- Campus Parking Area



**AUTHORITY TO CONSTRUCT THE CENTRAL HEATING PLANT
BURNER REPLACEMENTS, UW-RIVER FALLS**

REQUESTED ACTION

Adoption of Resolution 3.C., authorizing the construction of the Central Heating Plant Burner Replacements project at UW-River Falls.

Resolution 3.C. That, upon the recommendation of the Chancellor of UW-River Falls and the President of the UW System, the UW System Board of Regents authorizes construction of the Central Heating Plant Burner Replacements project at an estimated total project cost of \$7,400,000 (\$4,236,000 Segregated Revenues; \$1,934,000 EX-General Fund Supported Borrowing; and \$1,230,000 Program Revenue Supported Borrowing).

SUMMARY

This request resolves one of the most critical central heating and cooling plant and utility distribution system repairs and renovations at a four-year university in the Universities of Wisconsin. The proposed project is required to maintain operation of the central plants, critical utilities, and utility distribution systems. The proposed scope of work in this request is considered the most efficient, practical, and economically justifiable to meet present and future needs of the university.

This project restores full redundant steam capacity in the Central Heating Plant by replacing the natural gas and fuel oil burners in Boiler No.'s 1 and 2. The fuel oil burner is mounted high on the boiler, causing a loss in efficiency and capacity. The natural gas burners are of an older style and further limit the capacity of the boiler. This project installs new burners at optimal locations in the boiler and will be sized to restore firm plant capacity. Project work also includes replacing the associated fuel piping, boiler refractory and casing, and related equipment to accommodate the change in burner types and locations.

Presenter

- Alex Roe, Senior Associate Vice President for Capital Planning and Budget

BACKGROUND

Buildings located on all of the UW universities main campuses are served by a variety of utilities, which are critical to their operation, and have a replacement value in the hundreds of millions of dollars. Repair, renovation, and replacement of these systems is a constant process requiring a substantial and consistent investment. Routine maintenance is supported by the operating budget. In addition, each biennium the Universities of Wisconsin Administration identifies critical repair and renovation projects to be funded through the capital budget, as well as replacements for systems beyond their expected service life and/or where repairs are no longer feasible.

The coal handling equipment was removed in 2020, resulting in the primary fuel being natural gas and fuel oil as backup, and significantly lower overall capacity in comparison to coal. The plant does not have enough redundant capacity during peak loads to satisfy all the campus heating demands. If a large boiler were to breakdown, especially when operating on fuel oil, there is significant risk of having insufficient steam to protect campus buildings from freezing and to provide heat to the 2,400 student residents on campus. The natural gas supply to the central campus heating plant has been constrained and/or curtailed several times during the past 5 years due to inclement weather conditions and by order of the utility provider. This project ensures adequate plant capacity to protect students, employees, and building assets on both remaining fuel source options available to campus.

Budget

Construction	\$	5,822,000
Design	\$	437,000
DFD Mgt	\$	268,000
Contingency	\$	873,000
TOTAL	\$	7,400,000

Previous Action

August 18, 2022
Resolution 11906

Approved the 2023-25 Capital Budget request, including the UW-River Falls Central Heating Plant Burner Replacements project for \$8,146,000 (\$4,236,000 General Fund Supported Borrowing; \$2,230,000 Program Revenue Supported Borrowing; and \$1,680,000 Cash), be submitted to the Department of Administration and State Building Commission.

Related Policies

- Regent Policy Document 19-1, "University Facilities, Space, and Physical Development Capital Funding and Costs"
- Regent Policy Document 19-15, "Physical Development Principles"
- Regent Policy Document 19-16, "Building Program Planning and Approval"

**AUTHORITY TO CONSTRUCT 2023-25 CLASSROOM
RENOVATION/INSTRUCTIONAL TECHNOLOGY
IMPROVEMENT PROGRAM PROJECTS, UW SYSTEM**

REQUESTED ACTION

Adoption of Resolution 3.D., authorizing construction of 2023-25 Classroom Renovation/ Instructional Technology Improvement Program projects.

Resolution 3.D. That, upon the recommendation of the President of the UW System, the UW System Board of Regents approves the allocation of 2023-25 Classroom Renovation/Instructional Technology Improvement Program funds; authorizes construction of the related project at an estimated total cost of \$7,803,000 Segregated Fund Revenue of the originally enumerated \$46,604,000 Segregated Fund Revenue; and allows the Division of Facilities Development to transfer balances, adjust an individual project budget, and add or substitute other high-priority Classroom Renovation/Instructional Technology projects within the authorized funding.

SUMMARY

Inst	Project	SEG REV	Total
MSN	Van Hise Hall First Floor Classroom Renovation	\$2,280,000	\$2,280,000
EAU	Hibbard Hall Classroom Renovation	\$2,087,000	\$2,087,000
WTW	Center of the Arts Metals Laboratory Renovation	\$2,295,000	\$2,295,000
PLT	Boebel Hall Biochemistry Laboratory Renovation	\$1,141,000	\$1,141,000
	Total	\$7,803,000	\$7,803,000

Presenter

- Alex Roe, Senior Associate Vice President for Capital Planning and Budget

BACKGROUND

UW-Madison – Van Hise Hall First Floor Classroom Renovation:

This project will reconfigure and renovate 6,886 SF of corridors and heavily used classrooms on the first two floors of Van Hise Hall into larger, right-sized classrooms, better equipped to meet the instructional needs of the university. Construction will include the installation of new suspended acoustical ceilings, acoustic wall panels, signage, flooring, wall base, repair of plaster walls and soffits, construction of new walls, writing surfaces, new door frames, reinstallation of salvaged doors and door hardware and painting of surfaces. Project includes new fire alarm devices, occupancy sensors, new power and data jacks, and new audio-video equipment as well as clocks, light fixtures, electrical and data whips for new lecterns.

Budget/Schedule:

Construction	\$1,620,000
Design	\$170,000
DFDM Mgt	\$75,000
Contingency	\$245,000
Equipment	\$155,000
Other Fees	\$15,000
TOTAL	\$2,280,000

SBC Approval	Aug 2024
A/E Selection	Sep 2023
Design Report	May 2024
Bid Opening	Feb 2025
Start Construction	May 2025
Substantial Completion	Dec 2025

UW-Eau Claire – Hibbard Hall Classroom Renovation:

This project converts four small classrooms into two new general access classrooms located on the second floor and the third floor of Hibbard Hall. The new classrooms will be right-sized and better equipped to serve the instructional needs of the university. Ventilation, electrical, and telecommunications distribution will be replaced, relocated, and augmented as needed to support the revised room layouts. The project will include incorporating glass interior walls to allow borrowed light into the corridor. New instructional technology will be installed including an instruction station with integrated controls, electronically controlled data projector and projection screens or wall mounted monitors, instructional boards, and improved lighting controls. All classroom furnishings will be replaced with movable tables and chairs. New carpeting, base molding, and suspended acoustical ceiling tile systems will be installed along with new LED light fixtures.

Budget/Schedule:

Construction	\$1,397,000
Design	\$159,000
DFDM Mgt	\$64,400
Contingency	\$212,600
Equipment	\$242,000
Other Fees	\$12,000
TOTAL	\$2,087,000

SBC Approval	Aug 2024
A/E Selection	Sep 2023
Design Report	May 2024
Bid Opening	Mar 2025
Start Construction	May 2025
Substantial Completion	Sep 2025

UW-Whitewater - Center of the Arts Metals Laboratory Renovation:

This project consists of the renovation and internal expansion of the Metals Studio within Greenhill Center of the Arts, which is a two-story concrete, steel and masonry building on the University of Wisconsin-Whitewater campus. Work includes selective demolition, masonry walls, interior windows and doors, new finishes, lab casework, fume hood, equipment and furniture. Mechanical work will include replacing the existing rooftop exhaust fans, new ductwork and exhaust hoods and backdrafts. Plumbing and electrical work will include all new fixtures in the renovated areas.

Budget/Schedule:

Construction	\$1,625,000
Design	\$188,000
DFDM Mgt	\$75,000
Contingency	\$244,000
Equipment	\$163,000
TOTAL	\$2,295,000

SBC Approval	Aug 2024
A/E Selection	Sep 2023
Design Report	May 2024
Bid Opening	Dec 2024
Start Construction	Feb 2025
Substantial Completion	Aug 2025

UW-Platteville - Boebel Hall Biochemistry Laboratory Renovation:

This project builds a 1300 SF biochemistry laboratory in a room that was “white boxed” during the 2020 Boebel Hall renovation. This lab will accommodate the current and anticipated Biochemistry curriculum needs and expands upon the cross-disciplinary teaching and undergraduate research between Biology and Chemistry. The work includes new fume hoods, laboratory casework, and associated wet lab fixtures and equipment.

HVAC, electrical, lighting, plumbing and life safety work will be completed as necessary to support the laboratory.

Budget/Schedule:

Construction	\$765,300
Design	\$99,700
DFDM Mgt	\$35,300
Contingency	\$114,800
Equipment	\$125,900
TOTAL	\$1,141,000

SBC Approval	Aug 2024
A/E Selection	Sep 2023
Design Report	June 2024
Bid Opening	Jan 2025
Start Construction	March 2025
Substantial Completion	Aug 2025

Previous Action

August 18, 2022
Resolution 11906

Recommended that the UW System Instructional Space Projects Program Funding request of \$48,855,000 General Fund Supported Borrowing be submitted to the Department of Administration and the State Building Commission as part of the UW System 2023-25 Capital Budget Request.

Related Policies

- Regent Policy Document 19-1, "University Facilities, Space, and Physical Development Capital Funding and Costs"
- Regent Policy Document 19-15, "Physical Development Principles"
- Regent Policy Document 19-16, "Building Program Planning and Approval"

AUTHORITY TO CONSTRUCT A MINOR FACILITIES RENEWAL PROJECT, UW SYSTEM

REQUESTED ACTION

Adoption of Resolution 3.E., authorizing construction of a maintenance and repair project.

Resolution 3.E. That, upon the recommendation of the President of the UW System, the UW System Board of Regents grants authority to construct a minor facilities renewal project at an estimated total cost of \$5,463,600 Program Revenue Supported Borrowing.

SUMMARY

MINOR FACILITIES RENEWAL, 2023-25 BIENNIUM

INST	PROJ. NO.	PROJECT TITLE	SEG-REV	PRSB	TOTAL
WTW	23F5A	Wells Hall Elevator Modernization		\$5,463,600	\$5,463,600
MINOR FACILITIES RENEWAL, 2023-25 BIENNIUM SUBTOTAL			\$0	\$5,463,600	\$5,463,600

	SEG-REV	PRSB	TOTAL
JULY 2024 TOTAL	\$0	\$5,463,600	\$5,463,600

Presenter

- Alex Roe, Senior Associate Vice President for Capital Planning and Budget

BACKGROUND

UW-Whitewater – Wells Hall Elevator Modernization:

This project renovates and replaces four eleven-floor traction passenger elevators and one two-floor hydraulic freight elevator and converts one two-floor hydraulic freight elevator to a non-occupiable material lift in the Wells Residence Hall (East and West Wings). Elevator modernization includes the replacement of all machine room equipment and control systems. The elevator doors, equipment and control stations would be upgraded to meet

ADA requirements. Heating and cooling improvements in the equipment room will be implemented to satisfy the equipment warranty. New industrial LED fixtures will be provided in machine rooms and hoistways. Required fire alarm and smoke detection system upgrades in the machine rooms will be completed. Lighting in elevator lobbies will also be upgraded as required.

The traction passenger elevators were originally installed in 1960. Partial upgrades for each elevator were completed in 1999. The passenger elevators have been unreliable and require frequent service and repairs. The controls are obsolete and need to be replaced. The safety governors should be replaced with current code/design approved units. The hoist machines leak and should be replaced due to advanced age and ride quality. The machine sheaves are worn out and the cables are sitting low in the sheave grooves. The machine room has limited climate controls and will require HVAC/humidity control for the new elevators. The machine room lighting will need to be upgraded to meet code and if the sprinklers are left in place, then a shunt trip disconnect is required. The car operating panels should be replaced with new LED fixtures. The car traveling lanterns should be replaced with LED fixtures. The pit access stationary ladder for each elevator needs replacement as it does not meet current code.

The freight elevators were originally installed in 1996 and appear to be original to the design. Due to the age and condition, a complete replacement or conversion to a dedicated material lift is recommended. For the unit to be replaced, all existing components should be removed, and an entire new system installed. The hydraulic cylinders for the freight elevators have a single bottom design and should be replaced as they are no longer code approved and pose a safety and environmental risk. The relay logic freight elevator controls are obsolete and should be replaced. The freight elevator buttons are original and should be upgraded.

Related Policies

- Regent Policy Document 19-1, "University Facilities, Space, and Physical Development Capital Funding and Costs"
- Regent Policy Document 19-15, "Physical Development Principles"
- Regent Policy Document 19-16, "Building Program Planning and Approval"

AUTHORITY TO CONSTRUCT ALL AGENCY MAINTENANCE AND REPAIR PROJECTS, UW SYSTEM

REQUESTED ACTION

Adoption of Resolution 3.F., authorizing construction of various maintenance and repair projects.

Resolution 3.F. That, upon the recommendation of the President of the UW System, the UW System Board of Regents grants authority to construct various maintenance and repair projects at an estimated total cost of \$16,930,000 (\$9,660,100 Segregated Revenue; \$1,776,500 Program Revenue Supported Borrowing; and \$5,493,400 Cash).

SUMMARY

FACILITY MAINTENANCE AND REPAIR

INST	PROJ. NO.	PROJECT TITLE	SEG-REV	PRSB	CASH	TOTAL
GBY	23J6G	Kress Events Center Roof Replacement	\$2,692,000			\$2,692,000
MSN	20I1T	Hanson Biomedical Sciences Laboratory HVAC System Renovation	\$1,822,800			\$1,822,800
MSN	21E1Q	Parking Ramps 46 and 75 Elevator Jack Replacement			\$2,457,700	\$2,457,700
MSN	24D3T	Witte Hall Tower A HVAC System Improvements			\$1,775,500	\$1,775,500
PKS	23J3Q	Molinaro Hall/Wyllie Hall Elevator Modernization	\$2,641,000			\$2,641,000
WTW	23J2X	Center of the Arts Elevator Replacement	\$800,000			\$800,000
FACILITY MAINTENANCE AND REPAIR SUBTOTALS			\$7,955,800	\$0	\$4,233,200	\$12,189,000

UTILITY REPAIR AND RENOVATION

INST	PROJ. NO.	PROJECT TITLE	SEG-REV	PRSB	CASH	TOTAL
WTW	23J2W	Heating Plant Condensate/Deaerator Tank Replacement	\$1,704,300	\$155,500	\$1,130,200	\$2,990,000
WTW	23F1X	Parking Lot 11 Reconstruction		\$1,621,000	\$130,000	\$1,751,000
UTILITY REPAIR AND RENOVATION SUBTOTALS			\$1,704,300	\$1,776,500	\$1,260,200	\$4,741,000

	SEG-REV	PRSB	CASH	TOTAL
JULY 2024 TOTALS	\$9,660,100	\$1,776,500	\$5,493,400	\$16,930,000

Presenter

- Alex Roe, Senior Associate Vice President for Capital Planning and Budget

BACKGROUND**UW-Green Bay – Kress Events Center Roof Replacement:**

This project replaces 56,560 SF of built-up roofing system on the Kress Events Center. Project work includes completely removing the built-up roofing system, metal edges, flashing, and foam insulation down to the structural deck; and replacing all roofing materials including a minimum of 5 inches of tapered, rigid foam insulation to achieve an R-25 insulation value, a new fully adhered membrane roofing system, new metal edges, and flashing. All roof drains and bodies will also be replaced with new units and any asbestos abatement required for the roof drain piping insulation will also be completed under this project.

The modified bitumen built-up roof on the Kress Events Center was installed in 1994 with a 20-year warranty, as a replacement of the original 1972 built-up 20-year roof. This roof is no longer under warranty and has a limited remaining lifespan. The roof protects two hardwood sports courts where intramural sports for student life are held. If a catastrophic failure were to occur, there would be severe damage to the hardwood gymnasium flooring and substrate and require a full replacement of the 22,000 SF athletic performance flooring and cushion system.

UW-Madison – Hanson Biomedical Sciences Laboratory HVAC System Renovation:

This project renovates the HVAC system to provide air handling redundancy and installs a separate air handling system with redundancy for Biosafety Level 3 (BSL-3) and animal containment spaces. A new 420 SF mechanical room will be constructed to house the new air handling system on the northeast corner of the building. The new air handling unit will be connected to the building HVAC system to provide an adequate redundant supply fan configuration. The new mechanical room will open to grade and not into the building itself. Project work also includes replacement of a portion of underground building utility lines located on the site of the new mechanical room. The building's mechanical, electrical, and telecommunications infrastructure renovations will bring the facility into compliance with current National Institute of Health (NIH) standards for Animal Biosafety Laboratories.

The current air handling unit located in the basement is the single source of ventilation air and cooling for the building, with space reheat coils providing the final air tempering. The HVAC system is antiquated and does not meet current system or controls standards for a laboratory building, animal holding facility, or BSL-3 space.

UW-Madison – Parking Ramps 46 and 75 Elevator Jack Replacement:

This project modernizes two elevators in Ramp 46, two elevators in Ramp 75, and completes the associated building upgrades required to meet modern standards. Project work includes providing new controls, cab interiors, hoist way and cab doors, door panels, sills, push buttons, and hall lanterns for all elevators. Electrical infrastructure, lighting, and HVAC will be updated in all elevator control rooms. New hydraulic jacks and power units will be provided for Elevator No. 1 in both ramps. A new hoist machine will be provided for Elevator No. 2 in Ramp 46. New elevator vestibule fire alarm systems will be provided for both Lot 46 elevators.

A condition assessment was conducted in 2019 for various parking ramp existing elevators. Both elevators in Ramp 46 were part of the assessment and were assigned the highest priority level and should be considered for modernization as soon as possible. Lot 75 is served by two 6-stop hydraulic elevators. They both are 1991 vintage relay logic units and one required emergency repairs in 2020. These units are among the busiest on campus.

UW-Madison – Witte Hall Tower A HVAC System Improvements:

This project completes HVAC system updates and installs HVAC equipment and associated digital controls that provide ventilation to each resident room to mitigate the elevated humidity conditions. The duct risers and some floor ductwork are being completed by a previous project. This project installs Dedicated Outside Air System (DOAS) air units on the roof and completes the ductwork on several floors.

The Witte Residence Hall Renovation (14E20) was completed August 2019. During the academic year and after construction was completed, housing staff noticed a significant increase in condensation on the walls and windows in the newly renovated resident rooms. An investigation determined that the unusual building envelope, in combination with the building's size and increased efficiency of the building systems, prevented the HVAC system from properly balancing indoor humidity levels. This project completes the second portion of floor distribution ductwork and provides the dedicated outside air system to resolve the humidity and condensation issues.

UW-Parkside – Molinaro Hall/Wyllie Hall Elevator Modernization:

This project modernizes one hydraulic elevator in Molinaro Hall and three traction elevators in Wyllie Hall. The Molinaro Hall project work includes replacing non-proprietary controls, a belt-driven power unit, hydraulic jack, door operator equipment, all signal

fixtures, car enclosure, and wiring. The project will also upgrade the plumbing, HVAC, and electrical systems serving the elevator. The Wyllie Hall project work includes replacing traction machines, non-proprietary controls, door operator equipment, signal fixtures, car enclosures, hoistway door panels, and all wiring. General construction work is included to facilitate hoisting of the new and old equipment by crane. The project will also upgrade the plumbing, HVAC, and electrical systems serving the elevator.

Molinaro Hall is the primary classroom building and the elevator was last replaced in 1991 and modernized in 2007. The elevator has experienced recent and multiple weeks-long service outages, which has created hardships for students and faculty utilizing the building. In a recent outage, Facilities Management staff had to carry a student with mobility issues down the stairs because the elevator did not work. The door equipment is worn and in poor condition. The car sills are worn and in need of replacement. The microprocessor controls are old and unreliable. The hydraulic jack system and jack were retained through the 2007 modernization but are nearing the end of their useful life.

Wyllie Hall houses the library operations and collections, student services, and campus administration. The library twin elevators and the campus administration elevator are all original to the facility in 1972. These elevators were last modernized in 1998-1999 and have nearly 25-year-old microprocessor controls. The controls and the drive motor are considered by the manufacturer to be obsolete. Any failure of the controls in these elevators would result in a prolonged, multi-week outage to wait for the appropriate parts or service. The areas served by these elevators do not have other means of access and would pose a significant inconvenience and disruption to routine university business and library access. A controls outage on these elevators most likely would require a complete upgrade to resolve the issue and would be cost-prohibitive to the university. These elevators already have a history of operational failures, including faulting out during annual elevator inspections.

UW-Whitewater – Center of the Arts Elevator Replacement:

This project modernizes the three-stop hydraulic passenger elevator at the Center of the Arts. Project work includes upgrading of all elevator equipment; upgrading the elevator cab; upgrading the associated and required machine room mechanical, electrical, and plumbing systems; and replacing the hydraulic jack.

The Center of the Arts (153,310 GSF) was constructed during 1970 and has two stories above ground and one basement level. The elevator systems and associated wiring are original to the building. The motors and drive systems are no longer made and parts are unavailable. The drives are obsolete and no longer supported by the manufacturer. The frequency of bearing, seal, drive, and circuit board failures have increased and elevator reliability is becoming a significant concern. When parts fail, maintenance staff have a difficult time finding compatible replacement parts as they are no longer manufactured, nor easily found. During past failures, the car has been inoperable for extended time, and

as one of the largest campuses that serve disabled students this is unacceptable. Systems and components have been repaired in a patchwork fashion, using any available national stock, to keep the elevator in service. The current pit frequently floods and has become an issue with state elevator inspectors, who may shut this elevator down. The ability to continue this approach will be compromised when major components fail. The proposed upgrades will ensure that the elevators function properly, meet ADA requirements, and have required life safety systems.

UW-Whitewater – Heating Plant Condensate/Deaerator Tank Replacement:

This project removes and replaces the deaerator, condensate, and blowdown separator tanks located within the heating plant. Capacity of the new tanks will be sized for future growth of the campus and improved operation of the steam heating system. Programmable logic controllers (PLC) will be upgraded and integrated into the central plant controls system. The upper roof will be replaced to facilitate the deaerator tank installation and improve roof access for the heating plant staff.

This project provides a reliable source of properly conditioned water for the three boilers at the central heating plant. The current deaerator is original to the building, installed in 1964. Non-destructive examination indicates extensive pitting and corrosion throughout the vessel. This corrosion makes the tank susceptible to failure. Multiple leaks have developed risking the integrity of the Campus steam Utility. The deaerator is an integral part of the heating plant. It increases the efficiency of the boilers by raising the temperature of the feedwater and removes oxygen from the boiler feedwater so that boiler tube corrosion does not occur. The flash tank is required to condition boiler wastewater before discharge maintaining compliance with Wisconsin Safety and Professional Services code with effluent waste to the City of Whitewater owned utilities. The city requires campus to remove thermal energy before discharge to their utilities as part of our agreement with the wastewater treatment plant.

UW-Whitewater – Parking Lot 11 Reconstruction:

This project replaces the asphalt pavement for Parking Lot 11. The old pavement will be removed, the base course will be regraded, and new asphalt pavement will be installed. Select concrete curb, gutter, and sidewalk will be replaced in-kind based on areas that are damaged or to facilitate positive drainage. All stormwater inlets in the parking lot will have the castings adjusted and new adjustment rings placed.

The parking lot was constructed in 2000. The asphalt has significant cracking throughout this area, as well as minor rutting. There are multiple asphalt patches that have failed, and there is widespread alligator cracking. It currently has a PASER rating of 3. Curb and gutter have settled in some areas and in other areas it has been damaged by snowplows. The parking lot can no longer be patched and has deteriorated beyond repair.

Related Policies

- Regent Policy Document 19-1, "[University Facilities, Space, and Physical Development Capital Funding and Costs](#)"
- Regent Policy Document 19-15, "[Physical Development Principles](#)"
- Regent Policy Document 19-16, "[Building Program Planning and Approval](#)"

Board of Regents

Monday, July 8, 2024

Item 4.

**APPROVAL OF ADMINISTRATIVE CODE EMERGENCY AND
PROPOSED PERMANENT RULE DRAFTS AND
NOTICES OF SUBMITTAL TO THE LEGISLATIVE COUNCIL
FOR CHAPTERS UWS 1, 4, 7, 11, AND 17**

**APPROVAL OF INTERIM CHANGES TO
REGENT POLICY DOCUMENTS 14-2 AND 14-3**

REQUESTED ACTIONS

Adoption of Resolutions 4.A. and 4.B.

Resolution 4.A. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Administrative Code Emergency and Proposed Permanent Rule Drafts and Notices of Submittal to the Legislative Council for Wisconsin Administrative Code Chapters UWS 1 (“Definitions of Terms Used in Chs. UWS 1 to 6”), UWS 4 (“Procedures for Faculty Dismissal and for Dismissal and Discipline in Title IX Cases”), UWS 7 (“Procedures for Faculty Dismissal in Special Cases”), UWS 11 (“Procedures for Academic Staff Dismissal and for Discipline and Dismissal in Title IX Cases”), and UWS 17 (“Student Nonacademic Disciplinary Procedures”).

Resolution 4.B. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the interim changes to Regent Policy Document 14-2, “Sexual Violence and Sexual Harassment” and Regent Policy Document 14-3, “Equal Opportunities in Education: Elimination of Discrimination Based on Gender,” pending and effective upon implementation of the emergency rules for Wisconsin Administrative Code Chapters UWS 1, 4, 7, 11, and 17.

SUMMARY

Title IX of the Education Amendments of 1972 requires that all educational institutions that receive federal funds of financial assistance prohibit sex discrimination in their education

programs and activities (34 C.F.R. Part 106). The U.S. Department of Education has engaged in rulemaking to further examine and clarify schools' responsibilities in responding appropriately to reports of sex discrimination, sexual harassment, sexual violence, intimate partner violence, and stalking involving faculty, staff, and students as well as pregnant and parenting students. On April 19, 2024, the Department released a final rule which all recipient educational institutions are required to comply with by August 1, 2024.

UW Administration is seeking to modify Chapters UWS 1, 4, 7, 11, and 17 of the Wisconsin Administrative Code, (**Attachment A**) and Regent Policy Documents 14-2 (**Attachment C**) and 14-3 (**Attachment D**) in order to comply with the substantive and procedural requirements provided under the new federal regulations. In order to facilitate the rulemaking described in Attachment A, the Board of Regents is asked to approve the submittal of these rules to the Legislative Council Clearinghouse (see **Attachment B**).

Assuming Board approval of the draft emergency rules, the rulemaking process will follow the general timeline previously shared with the Board over the next year as noted in **Attachment E**.

This presentation will also provide the Board of Regents with an overview of substantive proposed changes in the relevant UWS Administrative Code and Regent policies in response to the Title IX 2024 regulations, and an overview of the current level of staff and resources related to Title IX work at the UWs.

New Title IX 2024 Regulations

- Overview of substantive changes
- Overview of university staffing levels and resources related to Title IX

Next Steps in Rulemaking Process and Public and Campus Outreach

- Timeline for implementation and compliance
- Public hearing on permanent and emergency rules

Presenters

- Dany Thompson, Title IX and Clery Compliance Specialist, Universities of Wisconsin
- Paige Smith, Chief Compliance and Risk Officer, Universities of Wisconsin
- Matt Lind, Senior Counsel, Universities of Wisconsin
- Quinn Williams, General Counsel, Universities of Wisconsin

BACKGROUND

Title IX of the Education Amendments was enacted in 1972. Up until 2011, enforcement of the law primarily focused on gender equity in athletics programs. In 2011, the U.S.

Department of Education under the Obama Administration issued a “Dear Colleague” letter that affirmed the law’s reach to sexual violence and require schools to take affirmative steps to respond to complaints of and work to proactively prevent sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. In 2015, the UW System Board of Regents approved changes to the UWS Administrative Code that were necessary to comply with this new guidance, and in 2016 the Board approved updates to policy.

In 2017, the U.S. Department of Education under the Trump Administration rescinded the previously issued guidance and released new guidance, followed by the publication of new federal regulations in May 2020. These changes focused on live hearings, cross examinations, and creating a formal grievance process for sexual harassment, along with major definition changes. The UW System Board of Regents approved interim modifications to Regent Policy Document 14-2, “Sexual Violence and Sexual Harassment,” and to relevant provisions of the UWS Administrative Code to gain compliance with the updated regulations by the required implementation date of August 14, 2020. Final revisions to UWS Administrative Code and Regent policy were subsequently approved and went into effect the following year.

In 2022, the U.S. Department of Education under the Biden Administration rescinded the guidance issued by the previous administration and released new guidance, followed by the publication of new federal regulations in April 2024. The new regulations focused on a few areas, with the main ones expanding the definition of Sex Discrimination to include gender, gender identity, and sexual orientation. It also gave new guidance on supportive measures, grievance processes, trainings required by all employees, updated definitions, and a myriad of smaller changes. It also provided new rules and protections for pregnant and expectant parents. Once again, Board approval of interim modifications to RPD 14-2, and relevant provisions of the UWS Administrative Code will be required to gain compliance with these new regulations before they go into effect on August 1, 2024. Additionally, Board approval of interim modifications changes to RPD 14-3 is also necessary to comply with the updated definition of “sex” in the new regulations and to implement the requirements related to pregnant and parenting individuals. Failure to gain compliance with the new regulations could result in loss of federal funding to the UW System.

Outline of Major Substantive Changes to Title IX Regulations

Expanded definitions of Sex Discrimination

- The term “Sex-Based Harassment” now encompasses all sexual violence and more clearly defines sexual harassment into Quid Quo Pro and Hostile Environment Harassment.

Explicitly includes Gender, Gender Identity, and Sexual Orientation

- Reports that would have fallen under another department now fall exclusively under Title IX.

Expanded reporting obligations

- All employees are now required to report instances of Sex Discrimination.
- All employees are now required to provide the Title IX Coordinator's information to students and employees who disclose they are pregnant or have other related conditions.

Expanded training obligations

- All employees are now required to be trained on reporting obligations and grievance procedures annually.
- Confidential Employees are now required to be trained on their specific reporting obligations and grievance procedures annually.
- Title IX Practitioners (which include Title IX Coordinators, Investigators, Decision-Makers, Appeals Officers, etc.) are required to be trained on their specific roles annually.

Title IX now extends to off-campus incidents

- Previous incidents that happened off campus under "Sexual Misconduct" are now moved to the Title IX umbrella and are under the purview of the Title IX Coordinator and those grievance procedures.

Expanded recordkeeping obligations

- Maintaining a list of practitioners, tracking their annual training, and maintaining records of training and materials for public requests.
- Maintaining a list of Confidential Employees, as defined by the new regulations, and tracking their annual training and auditing completion on a campus level.
- Publication of specific information annually.

Key Choice Points Included in the Draft Emergency Rules and Interim Regent Policies

Reporting Sex Discrimination:

To simplify training, UW institutions, other than UW-Madison, are going to require all employees who are not confidential employees to report incidents of sex discrimination to the Title IX coordinator.

Burden of Proof:

UW institutions are making no changes to their burden of proof. They have used the preponderance of the evidence standard for sexual misconduct for over a decade and will continue to do so.

Single Investigator Model:

UW institutions are not making any changes on this point. UW institutions only use a single investigator model for non-Title IX misconduct that will not lead to suspension or

expulsion. All Title IX misconduct cases will have an opportunity for a live hearing AND an appeal.

Settlement Agreements, i.e. Informal Resolution:

Individual UW institutions will have the limited flexibility provided by the rules. Institutions will have to determine whether a settlement will have disciplinary effect for the respondent, whether it will impact future discipline of the respondent, and how that will be communicated to the parties.

Evidence Sharing:

UW institutions are only making the required changes to how they share evidence. UW institutions will continue to provide all parties access to the full written reports and all relevant and otherwise permissible evidence.

Advisors:

All parties will still be permitted to have an advisor, who may be an attorney, throughout the entire process. Sex-based harassment is a term from the new regulations that includes the more serious offenses, such as sexual violence and sexual harassment. For hearings on cases of sex-based harassment involving a student party, UW institutions will provide an advisor at its own expense for any party that does not have an advisor.

Questioning:

Individual parties are prohibited from cross-examining witnesses or other parties. A key flexibility that UW institutions will be taking advantage of is permitting hearing examiners and hearing committees to ask questions in addition to advisors. Hearing examiners and hearing committees will ask questions in two scenarios:

- 1) when a party does not have an advisor
- 2) when a witness or party makes a request not to be questioned by an advisor for good cause.

Previous Actions

Chapters UWS 1, 4, 7, 11, and 17 of the Wisconsin Administrative Code

The Board last discussed this topic at its June 26th, 2024, meeting when it approved the scope statements for the emergency and permanent rule revision of Chapters 1, 4, 7, 11, and 17 of the Wisconsin Administrative Code.

On June 8th, 2024, the Board approved a notice of a preliminary public hearing on the scope statements for the emergency and permanent rule revision of Chapters 1, 4, 7, 11,

and 17 of the Wisconsin Administrative Code and the preliminary public hearing was held on June 14, 2024.

In April 2015, the Board of Regents amended Chapters UWS 4, "Procedures for Dismissal of Faculty," UWS 7, "Dismissal of Faculty in Special Cases," UWS 11, "Dismissal of Academic Staff for Cause," and UWS 17, "Nonacademic Student Misconduct" of the Wisconsin Administrative Code through [Resolution 10476](#), [Resolution 10477](#), and [Resolution 10478](#), all of which addressed the Dear Colleague Letter updates from the U.S. Department of Education.

In August 2020, the Board of Regents approved the implementation of emergency rules to modify Chapters UWS 4, 7, 11, and 17 through [Resolution 11474](#), to comply with updated federal regulations. In December 2020, the Board of Regents adopted [Resolution 11568](#) approving the permanent rule language for Chapters UWS 4, "Procedures for Faculty Dismissal and for Dismissal and Discipline in Title IX Cases," UWS 7, "Procedures for Faculty Dismissal in Special Cases," UWS 11, "Procedures for Academic Staff Dismissal and for Discipline and Dismissal in Title IX Cases," and UWS 17, "Student Nonacademic Disciplinary Procedures," all of which took effect in May 2021.

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

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

In July 2014, the President of the UW System ordered the Task Force on Sexual Violence and Harassment to lead and coordinate systemwide efforts to strengthen UW System's capacity to prevent sexual violence and harassment. In December 2016, the Board of Regents adopted [Resolution 10786](#) approving the task force's recommended revisions to RPD 14-2, which included a new template and common definitions to be used in UW institutional policies.

On August 5, 2020, the Board adopted [Resolution 11475](#) approving interim changes to RPD 14-2 to gain compliance with new federal regulations released by the Trump Administration. Additional changes to RPD 14-2 were approved in August 2020 ([Resolution 11494](#)) and June 2021 ([Resolution 11637](#)) to bring the policy in line with final revisions to UWS Administrative Code.

Regent Policy Document 14-3, "Equal Opportunities in Education: Elimination of Discrimination Based on Gender"

On April 12, 1974, the Board adopted Resolution 716, which codified Resolution 449 as a new policy, "Equal Opportunities in Education," and included additional provisions that acknowledged the UW System as an equal opportunity educational institution, stated that all UW System funded or sponsored functions shall be generally available to all students without regard to sex, and directed UW institutions to: 1) review all educational functions and activities for discrimination on the basis of sex; 2) prescribe corrective actions where sex discrimination is identified; and 3) act affirmatively to eliminate sex stereotypes. The policy required each institution to submit a report to the President of the UW System summarizing the results of efforts to eliminate discriminatory practices.

The current policy was adopted as Resolution 2927 on October 7, 1983. By that time, the policy had been revised to include a series of guidelines. The policy acknowledges that institutions are most appropriately responsible for identifying strategies to address specific issues related to equal opportunities in education at the institution.

UW System Administrative Policies

In order to comply with the substantive and procedural requirements provided under the new federal regulations, UW Administration will make interim modifications to UW System Administrative Policies 625 ("Youth Protection and Compliance") and 1293 ("Mandatory Training").

Related Laws and Policies

- [Chapter UWS 1, Wis. Admin. Code: "Definitions Of Terms Used In Chs. UWS 1 To 6"](#)
- [Chapter UWS 4, Wis. Admin. Code: "Procedures for Faculty Dismissal and for Dismissal and Discipline in Title IX Cases"](#)
- [Chapter UWS 7, Wis. Admin. Code: "Procedures for Faculty Dismissal in Special Cases"](#)
- [Chapter UWS 11, Wis. Admin. Code: "Procedures for Academic Staff Dismissal and for Discipline and Dismissal in Title IX Cases"](#)
- [Chapter UWS 17, Wis. Admin. Code: "Student Nonacademic Disciplinary Procedures"](#)
- [Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"](#)
- [Regent Policy Document 14-3, "Equal Opportunities in Education: Elimination of Discrimination Based on Gender"](#)
- [UW System Administrative Policy 625, "Youth Protection and Compliance"](#)
- [UW System Administrative Policy 1261, "Personnel Files"](#)
- [UW System Administrative Policy 1275, "Recruitment Policies"](#)
- [UW System Administrative Policy 1293, "Mandatory Employee Training"](#)

ATTACHMENTS

- A) Redline Rule Drafts for UWS 1, 4, 7, 11, and 17
- B) Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse
- C) Redline Draft of RPD 14-2
- D) Redline Draft of RPD 14-3
- E) Title IX Rulemaking Timeline

Chapter UWS 1

DEFINITIONS OF TERMS USED IN CHS. UWS 1 TO 246

Subchapter I – General

UWS 1.005 Applicability. The words and phrases in this subchapter have the designated meanings in chs. UWS 1 to 24 unless a different meaning is expressly provided, or the context clearly indicates a different meaning.

UWS 1.01 Academic staff. “Academic staff” means professional and administrative personnel, other than faculty and university staff, with duties and types of appointments that are primarily associated with higher education institutions or their administration.

Note: Adapted from s. 36.05(1), Wis. Stats.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; **2015 Wis. Act 330: am. Register April 2016 No. 724**, eff. 5-1-16.

UWS 1.02 Board of Regents or board. “Board of Regents” or “board” means the Board of Regents of the University of Wisconsin System.

Note: Adapted from s. 36.05(2), Wis. Stats.

UWS 1.021 Clear and convincing evidence. “Clear and convincing evidence” means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than preponderance of the evidence.

Note: Moved from ss. UWS 4.015(1), 7.015(1m), 11.015(1), & 17.02(2).

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; **2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724**, eff. 5-1-16.

UWS 1.025 Consult. “Consult” or “consulting” means thoroughly reviewing and discussing the relevant facts and discretionary issues.

Note: Moved from ss. UWS 4.015(4), 7.015(4), & 11.015(4).

UWS 1.029 Delivered. Except as otherwise specified, “delivered” means sent by electronic means to the specified individual’s primary institution-issued electronic communication account. In the event the institution has not issued such an account, “delivered” means sent to an email address the specified individual has used to communicate with the institution. In the event that institution is not aware of an email address used by the specified individual, “delivered” means sent by first class mail to the specified individual’s last known address.

Note: Adapted from s. UWS 17.02(4).

UWS 1.03 Department. “Department” means a group of faculty members recognized by the faculty and chancellor of the institution, and the Board of Regents, as dealing with a common field of knowledge or as having a common or closely related disciplinary or interdisciplinary interest.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; **2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724**, eff. 5-1-16.

UWS 1.04 Faculty. “Faculty” means persons who hold the rank of professor, associate professor, assistant professor, or instructor in an academic department or its functional equivalent in an institution. The appointment of a member of the academic staff may be converted to a faculty appointment in accordance with s. UWS 3.01 (1) (c).

Note: Adapted from s. 36.05(8), Wis. Stats.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 1.05 Faculty status. By action of the appropriate faculty body and chancellor of an institution, members of the academic staff may be designated as having “faculty status.” “Faculty status” means a

right to participate in faculty governance of an institution in accordance with the rules of the institution. Faculty status does not confer rank or tenure, or convert an academic staff appointment into a faculty appointment.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 1.06 Institution. "Institution" means any university, or an organizational equivalent designated by the board.

Note: Replaces 17.02(10). Adapted from s. 36.05(9), Wis. Stats.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 1.0638 Notice periods.

~~(1) When an act is required by these rules to be done within a specified number of days:~~

~~(1a) Day shall mean calendar day.~~

~~(2b) The first day shall be the day after the event, such as receipt of a notice or conclusion of a hearing.~~

~~(3e) Each day after the first day shall be counted, except that a Sunday or legal holiday shall not be counted if it would be the final day of the period.~~

Note: Section (1) of this definition replaces s. UWS 17.02(3).

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 1.067 Preponderance of the evidence. "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."

Note: Moved from ss. UWS 4.015(7), 7.015(5), 11.015(7), & 17.02(13).

UWS 1.07 University. "University" means any baccalaureate or graduate degree granting institution.

Note: Adapted from s. 36.05(13), Wis. Stats.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 1.08 Notice periods.

~~(1) When an act is required by these rules to be done within a specified number of days:~~

~~(a) Day shall mean calendar day.~~

~~(b) The first day shall be the day after the event, such as receipt of a notice or conclusion of a hearing.~~

~~(c) Each day after the first day shall be counted, except that a Sunday or legal holiday shall not be counted if it would be the final day of the period.~~

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

Subchapter II – Title IX Misconduct

UWS 1.10 Applicability. The words and phrases in this subchapter have the designated meanings for the purposes of Title IX misconduct only in chs. UWS 4, 7, 11, and 17 unless a different meaning is expressly provided or the context clearly indicates a different meaning.

UWS 1.11 Complainant. "Complainant" means any of the following:

(1) A student or employee who is alleged to have been subjected to conduct that could constitute Title IX misconduct; or

(2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute Title IX misconduct and who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination.

Note: Adapted from 34 CFR s. 106.2 *Complainant*. Replaces ss. UWS 4.016(1) & .11; 11.016(1) & .13(1), & 17.02(2m).

UWS 1.12 Complaint by a Title IX Coordinator. “Complaint by a Title IX coordinator” means a Title IX complaint initiated by a Title IX Coordinator alleging Title IX misconduct in the absence of a Title IX complaint or after the withdrawal of any or all of the allegations in a Title IX complaint and in the absence or termination of an informal resolution process.

(1) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

- (a) The complainant’s request not to proceed with initiation of a Title IX complaint;**
- (b) The complainant’s reasonable safety concerns regarding initiation of a Title IX complaint;**
- (c) The risk that additional acts of sex discrimination would occur if a Title IX complaint is not initiated;**
- (d) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;**
- (e) The age and relationship of the parties, including whether the respondent is an employee of the institution;**
- (f) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;**
- (g) The availability of evidence to assist a decisionmaker in determining whether Title IX misconduct occurred; and**
- (h) Whether the institution could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under chs. UWS 4, 11, or 17, or in institution policy.**

(2) If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the institution from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

Note: Adapted from 34 CFR s. 106.44(f)(1)(v).

UWS 1.13 Consent. “Consent” means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in this subchapter. 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.

Note: Moved from ss. UWS 4.015(3), 11.015(3m), & 17.02(2r).

UWS 1.14 Dating violence. “Dating violence” means violence committed by a person:

- (1) who is or has been in a social relationship of a romantic or intimate nature with the complainant;**
and
- (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:**
 - (a) the length of the relationship,**
 - (b) the type of relationship, and**
 - (c) the frequency of interaction between the persons involved in the relationship.**

Note: Adapted from 34 C.F.R. s. 106.2 *Sex-based harassment* (3)(ii). Moved from ss. UWS 4.015(5), 11.015(5), & 17.151(3).

UWS 1.15 Domestic violence. “Domestic violence” means felony or misdemeanor crimes committed by a person who:

- (1) is a current or former spouse or intimate partner of the complainant under the domestic or family violence laws of Wisconsin, or a person similarly situated to a spouse of the complainant
- (2) is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner,
- (3) shares a child in common with the complainant, or
- (4) commits acts 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.

Note: Adapted from 34 C.F.R. s. 106.2 *Sex-based harassment* (3)(iii). Replaces ss. UWS 4.015(6), 11.015(6), & 17.151(4).

UWS 1.16 Education program or activity. “Education program or activity” means the operations of an institution which include, but are not limited to, conduct:

- (1) that is subject to the institution’s disciplinary authority;
- (2) over which the institution exercised substantial control; or
- (3) that occurs in a building owned or controlled by a student organization that is officially recognized by an institution.

Note: Adapted from 34 C.F.R. ss. 106.2 *Program or activity* -& .11. Replaces ss. UWS 4.11(2), 11.13(2), & 17.02(7m).

UWS 1.17 Fondling. “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.

Note: Moved from ss. UWS 4.015(9)(b), 11.015(9)(b), & 17.151(2)(b).

UWS 1.18 Hostile environment harassment. “Hostile environment harassment” means unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the institution’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (1) The degree to which the conduct affected the complainant’s ability to access the institution’s education program or activity;
- (2) The type, frequency, and duration of the conduct;
- (3) The parties’ ages, roles within the institution’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) The location of the conduct and the context in which the conduct occurred; and
- (5) Other sex-based harassment in the institution’s education program or activity; or

Note: Adapted from 34 C.F.R. s. 106.2 *Sex-based harassment* (2). Replaces ss. UWS 4.016(2)(b) & .11(5)(b); 11.016(2)(b) & .13(5)(b); & 17.151(1).

UWS 1.19 Impermissible evidence. “Impermissible evidence” means any of the following:

- (1) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- (2) Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's

capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to a party, unless the institution obtains the party's voluntary, written consent to do so in relation to the investigation and disciplinary process; or

- (3)** Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Note: Adapted from 34 C.F.R. s. 106.45(b)(7) & ss. UWS 4.15(5), 11.17(5), 17.152(4)(e).

UWS 1.21 Incapacitation. "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.

Note: Moved from ss. UWS 4.015(6m), 11.015(6m), 17.02(9m).

UWS 1.22 Incest. "Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as provided in s. 944.06, Stats.

Note: Moved from ss. UWS 4.015(9)(c), 11.015(9)(c), 17.151(2)(c).

UWS 1.23 Party. "Party" means a respondent or complainant.

Note: Adapted from 34 C.F.R. s. 106.2 *Party* & s. UWS 17.02(12m).

UWS 1.24 Quid pro quo harassment. "Quid pro quo harassment" means an employee, agent, or other person authorized by the institution to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Note: Adapted from 34 C.F.R. s. 106.2 *Sex-based harassment* (2). Replaces ss. UWS 4.016(2)(a) & .11(5)(a) & 11.016(2)(a) & .13(5)(a).

UWS 1.25 Rape. "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.

Note: Moved from ss. UWS 4.015(9)(a), 11.015(9)(a), 17.151(2)(a).

UWS 1.26 Relevant. "Relevant" means related to the allegations of Title IX misconduct under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged Title IX misconduct occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Title IX misconduct occurred.

Note: Adapted from 34 C.F.R. s. 106.2 *Relevant*.

UWS 1.27 Remedies. “Remedies” means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient’s education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person’s access to the recipient’s education program or activity after a recipient determines that sex discrimination occurred.

Note: Adapted from 34 C.F.R. s. 106.2 *Remedies*.

UWS 1.28 Respondent. “Respondent” means a faculty member, academic staff member, or student who is alleged to have violated the institution’s prohibition on Title IX misconduct, and who was subject to those prohibitions when the misconduct occurred.

Note: Adapted from 34 C.F.R. s. 106.2 *Respondent* & ss. UWS 4.11(4), 11.13(4), & 17.02(13m).

UWS 1.29 Sex. “Sex” includes, but is not limited to:

- (1) sex stereotypes,
- (2) sex characteristics,
- (3) pregnancy or related conditions,
- (4) sexual orientation, and
- (5) gender identity.

Note: Adapted from 34 C.F.R. s. 106.10; *Cf. Whitaker v. Kenosha School District*, 858 F.3d 1034 (7th Cir. 2017); & Wis. Stat. § 36.12

UWS 1.31 Sex-based harassment. “Sex-based harassment” means sexual harassment and other harassment on the basis of sex, that meets any of the definitions in this chapter of quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation.

Note: Adapted from 34 C.F.R. s. 106.2 *Sex-based harassment*. Partially replaces ss. UWS 4.11(6), 11.13(6), & 17.151(1)-(6).

UWS 1.32 Sex discrimination. “Sex discrimination” means, conduct on the basis of sex that excludes a person from participation in, denies a person the benefits of, or subjects a person to differential treatment under any education program or activity and includes, but is not limited to, sex-based harassment and sexual exploitation. Notwithstanding anything to the contrary contained in this section, nothing contained herein shall be construed to prohibit an institution from any of the following:

- (1) Maintaining separate living facilities for different sexes;
- (2) Operating or sponsoring separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport; or
- (3) Any other activity that is expressly permitted by 20 U.S.C. ch. 38 and 34 C.F.R. Part 106.

Note: Adapted from 20 U.S.C. ss. 1681 & 1686 & 34 C.F.R. s. 106.2 *Sex-based harassment* & .41(b).

UWS 1.33 Sexual assault. “Sexual assault” means an offense that meets any of the definitions of fondling, incest, rape, or statutory rape in this chapter.

Note: Adapted from 34 C.F.R. s. 106.2 *Sex based harassment* (3)(i) & ss. UWS 4.015(9), 11.015(9), & 17.151(2).

UWS 1.34 Sexual exploitation. “Sexual exploitation” means attempting, taking or threatening to take, nonconsensual sexual advantage of another person. Examples include:

- (1) Engaging in the following conduct without the knowledge and consent of all participants:

- (a) Observing, recording, or photographing private body parts or sexual activity of the complainant.
- (b) Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant.
- (c) Otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant.
- (2) 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.
- (3) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.
- (4) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.
- (5) Coercing the complainant to engage in sexual activity for money or anything of value.
- (6) Threatening distribution of any of the following, to coerce someone into sexual activity or providing money or anything of value:
 - (a) Photos, videos, or recordings depicting private body parts or sexual activity of the complainant.
 - (b) Other information of a sexual nature involving the complainant, including sexual history or sexual orientation.

Note: Moved from ss. UWS 4.015(10), 11.015(10), & 17.151(6).

UWS 1.35 Stalking. “Stalking” means engaging in a course of conduct directed at the complainant that would cause a reasonable person to:

- (1) fear for their safety or the safety of others;
- (2) or suffer substantial emotional distress.

Note: Adapted from 34 C.F.R. s. 106.2 *Sex based harassment* (3)(iv) & moved from ss. UWS 4.015(11), 11.015(11), & 17.151(5).

UWS 1.36 Statutory rape. “Statutory rape” means sexual intercourse with a complainant who is under the statutory age of consent as provided in s. 948.02, Stats.

Note: Moved from ss. UWS 4.015(9)(d), 11.015(9)(d), 17.151(2)(d).

UWS 1.37 Supportive measures.

- (1) “Supportive measures” means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:
 - (a) Restore or preserve that party’s access to the institution’s education program or activity, including measures that are designed to protect the safety of the parties or the institution’s educational environment; or
 - (b) Provide support during the institution’s grievance procedures or informal resolution process under subch. III of ch. UWS 4, subch. III of ch. UWS 11, subch. UWS 17, or any other similar process established by institution policy.
- (2) Supportive measures may vary depending on what the institution deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether

there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

Note: Adapted from 34 C.F.R. ss. 106.2 *Supportive measures*, .44(g)(1), &.45(l)(1).

UWS 1.38 Title IX complaint. “Title IX complaint ” means an oral or written request to the institution that objectively can be understood as a request for the institution to investigate and make a determination about alleged Title IX misconduct. The following persons have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the institution investigate and make a determination about alleged Title IX misconduct:

(1) A complainant;

(2) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or

(3) The Title IX Coordinator, after making the determination specified in s. UWS 1.12.

Note: Adapted from 34 C.F.R. ss. 106.2 *Complaint* & .45(a)(2). Replaces ss. UWS 4.11(3), 11.13(3), & 17.02(8m).

UWS 1.39 Title IX misconduct. “Title IX misconduct” means sex discrimination & Title IX retaliation.

Note: Partially replaces ss. UWS 4.11(6), 11.13(6), & 17.151(1)-(6).

UWS 1.41 Title IX retaliation. “Title IX retaliation” means intimidation, threats, coercion, or discrimination against any person by the institution, a student, or an employee or other person authorized by the institution to provide aid, benefit, or service under the institution’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Title IX misconduct, including in grievance procedures or in an informal resolution process under subch. III of ch. UWS 4, subch. III of ch. UWS 11, subch. III of ch. UWS 17, or any other similar process established by institution policy. Nothing in this definition precludes an institution from requiring an employee or other person authorized by an institution to provide aid, benefit, or service under the institution’s education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under subch. III of ch. UWS 4, subch. III of ch. UWS 11, subch. III of ch. UWS 17, or any other similar process established by institution policy. Title IX retaliation includes peer retaliation, which is Title IX retaliation by a student against another student.

Note: Adapted from 34 C.F.R. s. 106.2 *Peer retaliation & Retaliation*. Replaces s. UWS 17.09(20).

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

Subchapter I — General

UWS 4.01 Dismissal for cause.

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

Note: Edited to remove passive voice consistent with s. UWS 4.12(2).

- (2) A faculty member is entitled to enjoy and exercise all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.
- (3) Faculty dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in s. ~~UWS 4.11~~ UWS 1.39, shall be governed by ss. UWS 4.11 to UWS 4.24.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; **CR 20-059: am. (1), cr. (3) Register May 2021 No. 785, eff. 6-1-21; correction in (1) made under s. 35.17, Stats., Register May 2021 No. 785.**

~~**UWS 4.015 — Definitions. In this chapter:**~~

- (1) ~~“Clear and convincing evidence” means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than “preponderance of the evidence.”~~
- Note: Moved to s. UWS 1.021.
- (2) ~~“Complaint” means an allegation against a faculty member reported to an appropriate university official.~~
- Note: Replaced by s. UWS 4.016(1).
- (3) ~~“Consent” means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in this section. A person is unable to give consent if the person is in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.~~
- Note: Moved to s. UWS 1.13.
- (4) ~~“Consult” or “consulting” means thoroughly reviewing and discussing the relevant facts and discretionary issues.~~
- Note: Moved to s. UWS 1.025.
- (5) ~~“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.~~
- Note: Moved to s. UWS 1.4.
- (6) ~~“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is~~

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

Note: Replaced by s. UWS 1.15.

~~(6m) “Incapacitation” means the state of being unable to physically or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.~~

Note: Moved to s. UWS 1.21.

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

Note: Moved to s. UWS 1.067.

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

Note: Replaced by s. UWS 1.33.

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

Note: Moved to s. UWS 1.25.

~~(b) “Fondling” means the touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the complainant's age or because of the complainant's temporary or permanent mental incapacity.~~

Note: Moved to s. UWS 1.17.

~~(c) “Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as provided in s. 944.06, Stats.~~

Note: Moved to s. UWS 1.22.

~~(d) “Statutory rape” means sexual intercourse with a complainant who is under the statutory age of consent as provided in s. 948.02, Stats.~~

Note: Moved to s. UWS 1.36.

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

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

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

~~(b) Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing the complainant to do the same.~~

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

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

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

~~(f) Threatening distribution of any of the following, to coerce someone into sexual activity or providing money or anything of value:~~

- ~~1. Photos, videos, or recordings depicting private body parts or sexual activity of the complainant.~~
- ~~2. Other information of a sexual nature involving the complainant, including sexual history or sexual orientation.~~

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

Note: Moved to s. UWS 1.34.

History: CR 15-061: cr. Register June 2016 No. 726, eff. 7-1-16; correction in (2) and (8) under 35.17, Stats., Register June 2016 No. 726; CR 20-059: r. and recer. (intro.), (2) to (4), am. (5), (6), cr. (6m), r. (8), r. and recer. (9), (10), am. (11) Register May 2021 No. 785, eff. 6-1-21; correction in (5), (10) (a) 2. made under s. 35.17, Stats., Register May 2021 No. 785.

Subchapter II — Procedures for Faculty Dismissal ~~and Discipline~~ in Non-Title IX Cases

UWS 4.016 Subchapter II definitions. In this subchapter:

- (1) “Complaint” means an allegation of misconduct other than Title IX misconduct against a faculty member reported to an appropriate official of the institution.

Note: Adapted from s. UWS 4.015(2).

~~“Complainant” means any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation as defined in this section and s. UWS 4.015.~~

Note: Replaced by s. UWS 1.11.

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

~~(a) *Quid pro quo sexual harassment.*~~

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

Note: Replaced by s. UWS 1.24.

~~(b) *Hostile environment sexual harassment.*~~

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

Note: Replaced by s. UWS 1.18.

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register May 2021.

UWS 4.02 Responsibility for charges.

- (1) Whenever the chancellor of an institution within the University of Wisconsin system receives a complaint against a faculty member which the chancellor deems substantial and which, if true, might lead to dismissal under s. UWS 4.01, the chancellor, or designee, shall within a reasonable time initiate an investigation and shall, prior to reaching a decision on filing charges, offer to discuss the matter informally with the faculty member. ~~For complaints of sexual harassment,~~

~~sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the chancellor, or designee, shall appoint the Title IX Coordinator, or designee, to initiate an investigation in accordance with applicable policies. The chancellor, or designee, shall also offer to discuss the matter informally with the complainant, and provide information regarding rights under this chapter. Both the faculty member and the complainant shall have the right to be accompanied by an advisor of their choice at any meeting or proceeding that is part of the institutional disciplinary process.~~ A faculty member may be dismissed only after receipt of a written statement of specific charges from the chancellor as the chief administrative officer of the institution and, if a hearing is requested by the faculty member, in accordance with the provisions of this chapter. If the faculty member does not request a hearing, action shall proceed along normal administrative lines but the provisions of ss. UWS 4.02, 4.09, and 4.10 shall still apply.

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; 2015 Wis. Act 330 ss. 6, 20: am. (1), (3) Register April 2016 No. 724, eff. 5-1-16; CR 15-061: am. (1), (3) Register June 2016 No. 726, eff. 7-1-16; merger of (3) treatments by 2015 Wis. Act 330 and CR 11-061 made under s. 13.92 (4) (bm) Register September 2016 No. 729; CR 20-059: am. (1), (3) Register May 2021 No. 785, eff. 6-1-21.

UWS 4.03 Standing faculty committee. The faculty of each institution shall provide a standing committee charged with hearing dismissal cases and making recommendations under this chapter. This standing faculty committee shall operate as the hearing agent for the board pursuant to s. 227.46 (4), Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of law and decision to the board according to s. UWS 4.07.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 4.05 Adequate due process.

- (1) A fair hearing for a faculty member whose dismissal is sought under s. UWS 4.01 shall include the following:
 - (a) Service of written notice of hearing on the specific charges at least 10 days prior to the hearing;
 - (b) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
 - (c) A right to be heard in the faculty member's defense;
 - (d) A right to an advisor, counsel, or other representatives, and to offer witnesses;

- (e) A right to confront and cross-examine adverse witnesses. ~~If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the hearing committee may reasonably restrict the faculty member or the complainant from questioning each other;~~
- (f) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
- (g) Written findings of fact and decision based on the hearing record;
- (h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.

~~(2) If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the complainant shall have all the rights provided to the faculty member in sub. (1) (a) to (h), except as may be precluded by applicable state or federal law.~~

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) (h) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction in (1) (h) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617; CR 15-061: am. (1) (d), (e), cr. (2) Register June 2016 No. 726, eff. 7-1-16; correction in (2) under 35.17, Stats., Register June 2016 No. 726; **CR 20-059: am. (1) (c), (e) Register May 2021 No. 785, eff. 6-1-21.**

UWS 4.06 Procedural guarantees.

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

proceeding be carried to a final decision. Unless the faculty member so elects in writing, the proceeding shall be discontinued at the expiration of the appointment;

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 15-061: cr. (1) (am), am. (1) (d), (i), (j) Register June 2016 No. 726, eff. 7-1-16; **CR 20-059: am. (1) (am), (c), (d), (g) Register May 2021 No. 785, eff. 6-1-21.**

UWS 4.07 Recommendations to the chancellor and the regents.

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; CR 15-061: am. Register June 2016 No. 726, eff. 7-1-16; **CR 20-059: am. Register May 2021 No. 785, eff. 6-1-21; correction in (title) made under s. 13.92 (4) (b) 2., Stats., Register May 2021 No. 785.**

UWS 4.08 Board review.

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

subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies). ~~For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have the same opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, as the faculty member.~~

- (2) If, after the hearing, the board decides to take action different from the recommendation of the faculty hearing committee and/or the chancellor, then before taking final action the board shall consult with the faculty hearing committee and/or the chancellor, as appropriate.
- (3) If a faculty member whose dismissal is sought does not request a hearing pursuant to s. UWS 4.04 the board shall take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.

~~(4) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the faculty member and complainant shall be simultaneously notified of the board's final decision.~~

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 15-061: am. (1), cr. (4) Register June 2016 No. 726, eff. 7-1-16; **CR 20-059: am. (1), (4) Register May 2021 No. 785, eff. 6-1-21.**

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; CR 06-078: am. Register May 2007 No. 617, eff. 7-1-07; **CR 20-059: am. Register May 2021 No. 785, eff. 6-1-21.**

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

Subchapter III — Procedures for Faculty Dismissal and Discipline in Title IX Cases

~~**UWS 4.11— Subchapter III definitions.** In this subchapter:~~

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

~~**Note:** Replaced by s. UWS 1.12.~~

~~(2) “Education program or activity” means, for purposes of Title IX misconduct only, locations, events, or circumstances at which the university exercised substantial control over both the faculty member and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.~~

~~**Note:** Replaced by s. UWS 1.16.~~

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

~~**Note:** Replaced by s. UWS 1.38.~~

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

~~Note: Replaced by s. UWS 1.28.~~

~~(5) “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:~~

~~(a) An employee of the institution conditions the provisions of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct.~~

~~Note: Replaced by s. UWS 1.24.~~

~~(b) Unwelcome conduct of a sexual nature directed toward a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, the conduct is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity.~~

~~Note: Replaced by s. UWS 1.18.~~

~~(6) “Title IX misconduct” means sexual assault, stalking, dating violence, or domestic violence, as defined in s. UWS 4.015 and sexual harassment, as defined in sub. (5).~~

~~Note: Replaced by ss. UWS 1.31 & .39.~~

~~History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21; corrections in (6) made under ss. 13.92 (4) (b) 7. and 35.17, Stats., and correction in (3) made under s. 13.92 (4) (b) 12., Stats., Register May 2021 No. 785.~~

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

(1) The board may dismiss a faculty member for cause, or impose lesser discipline, including, but not limited to, a written reprimand, mandatory training, and/or a suspension without pay on a faculty member, for Title IX misconduct as defined in s. ~~UWS 4.14~~UWS 1.39.

~~Note: See 34 C.F.R. s. 106.45(1)(2).~~

(2) Title IX ~~misconduct allegations~~complaints against faculty shall follow the disciplinary procedure in ~~ss. UWS 4.11 to 4.24~~this subchapter. If a Title IX complaint is consolidated with an allegation of non-Title IX misconduct pursuant to s. UWS 4.15(3), the institution shall use the procedures in this subchapter. The board may dismiss a faculty member having tenure only for just cause and may otherwise discipline a faculty member having tenure only after due notice and hearing. The board may dismiss a faculty member having a probationary appointment prior to the end of the faculty member's term of appointment only for just cause and may otherwise discipline the faculty member only after due notice and hearing.

~~Note: See 34 C.F.R. s. 106.45(b)(8).~~

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

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

~~Note: See 34 C.F.R. ss. 106.45(b)(3) & .46(c)(1)(i).~~

(5) No person designated as a Title IX Coordinator or as an investigator, decision maker, hearing committee member, or hearing examiner for any Title IX complaint may have a conflict of interest or bias for or against complainants or respondents generally or an individual party. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

~~Note: Adapted from 34 C.F.R. s. 106.45(b)(2).~~

~~History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.~~

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

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

~~History: CR 20-059; cr. Register May 2021 No. 785, eff. 6-1-21.~~

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

- ~~(1) The university shall dismiss a formal Title IX complaint consisting of allegations that meet any of the following conditions:~~
 - ~~(a) The alleged conduct would not constitute Title IX misconduct if proved.~~
 - ~~(b) The alleged conduct did not occur in a university program or activity.~~
 - ~~(c) The alleged conduct did not involve actions against someone physically located in the United States.~~
- (2) The university-institution may dismiss a ~~formal~~ Title IX complaint against a faculty member when any of the following applies:

~~(a) The institution is unable to identify the respondent after taking reasonable steps to do so. The complainant formally requests in writing to withdraw the formal Title IX complaint.~~

~~Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(i).~~

~~(b) The respondent is not participating in the institution's education program or activity and is not employed by the institution. The faculty member is no longer employed by the university.~~

~~Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(ii).~~

~~(c) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under s. UWS 1.12, and the institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the Title IX complaint, if any, would not constitute Title IX misconduct even if proven. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal Title IX complaint. When dismissing a complaint alleging sex-based harassment involving a student party, an institution must obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations.~~

~~Note: Adapted from 34 C.F.R. ss. 106.45(d)(1)(iii) & .46(d)(2).~~

~~(d) The institution determines the conduct alleged in the Title IX complaint, even if proven, would not constitute Title IX misconduct. Prior to dismissing the complaint under this paragraph, the institution must make reasonable efforts to clarify the allegations with the complainant.~~

~~Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(iv).~~

- (3) The university-institution generally shall generally decide whether to dismiss a ~~formal~~ Title IX complaint within 30 days of its receipt of the ~~formal~~ Title IX complaint, but the university-The institution may extend this timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. If a ~~formal~~ Title IX complaint is dismissed, then the university-institution shall provide notice simultaneously notify all parties of the dismissal in writing, and including the reasons therefore for the dismissal and any bases for an appeal of the dismissal to the faculty member and complainant in writing.

~~Note: See 34 C.F.R. ss. 106.45(b)(4) & (d)(2)-(3) & .46(d)(1) & (e)(5).~~

- (4) Within 20 days of receipt of the notice of dismissal, the complainantany party may appeal the dismissal by filing a written appeal with the chancellor. The complainantAny party may appeal on any of the following bases:

~~Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).~~

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

Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(i).

- (b) New evidence that was not reasonably available at the time of the dismissal that ~~could~~ would affect change the outcome of the matter.

Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(ii).

- (c) The ~~university~~ employee of the institution making the dismissal decision had a conflict of interest or bias for ~~the faculty member~~ or against ~~the complainant an individual party~~, or ~~for or~~ against complainants or respondents generally, that ~~affected~~ would change the dismissal decision.

Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(iii).

- (4m)** If the dismissal is appealed, the institution must notify the parties of any appeal, including notice of the allegations consistent with s. 4.15(2) if notice was not previously provided to the respondent.

Note: See 34 C.F.R. s. 106.45(d)(3).

- (5) The chancellor shall provide ~~the faculty member and complainant~~ all parties the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor shall simultaneously issue a decision to ~~the complainant and the faculty member~~ all parties within 30 days of receipt of a written appeal. The institution may extend this timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. The chancellor's decision on the appeal of a dismissal shall include the chancellor's rationale for the decision and shall be final.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

- ~~(6) The dismissal of a formal Title IX complaint does not preclude the university from otherwise pursuing discipline against the faculty member under other administrative rules or university policies.~~ **History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (3) made under s. 13.92 (4) (b) 12., Stats., Register May 2021 No. 785.**

UWS 4.15 Investigation of Title IX ~~misconduct allegations~~ complaint.

- (1) Unless the ~~university~~ institution dismisses a ~~formal~~ Title IX complaint, the ~~university~~ institution shall appoint an investigator to conduct an investigation of the allegations in the ~~formal~~ Title IX complaint. The burden is on the institution—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Title IX misconduct occurred.

Note: Adapted from 34 C.F.R. s. 106.45(f)(1).

- (2) The investigator shall provide ~~the faculty member and the complainant~~ all parties with a notice of investigation. The notice shall include all of the following information:

- (a) The grievance process, including informal resolution options.

Note: See 34 C.F.R. s. 106.45(c)(1)(i).

- (b) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute Title IX misconduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the institution. The allegations of Title IX misconduct with sufficient detail for the faculty member to prepare a response to the allegations, including the identity of the complainant as well as the date and location of the incident if available.

Note: Adapted from 34 C.F.R. s. 106.45(c)(1)(ii).

- (bm)** A statement that Title IX retaliation is prohibited.

Note: Adapted from 34 C.F.R. s. 106.45(c)(1)(iii).

- (c) A statement affirming the faculty member is presumed not responsible for the alleged ~~violation~~ Title IX misconduct until a determination is made pursuant to this subchapter and that prior to the determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(i).

(d) ~~The faculty member and complainant~~ All parties have the right to an advisor of their choice to serve in the role set out in this subchapter, and that advisor may be, but is not required to be, an attorney.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(ii).

(e) ~~The faculty member and complainant~~ All parties have the right to inspect and review the relevant and not otherwise impermissible evidence.

Note: Adapted from 34 C.F.R. ss. 106.45(c)(1)(iv) & .46(c)(1)(iii).

(f) Information about any code of conduct rules which prohibit ~~the faculty member or the complainant~~ any party from knowingly making false statements or submitting false information during the disciplinary process.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(iv).

(3) ~~The faculty member and complainant~~ All parties shall receive an amended notice of investigation any time additional charges are added or any charges are materially amended or consolidated with other charges 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. Title IX complaints may be consolidated with cases of non-Title IX misconduct if they arise out of the same facts or circumstances.

Note: See 34 C.F.R. ss. 106.45(c)(2) & .46(c)(2).

(3m) To the extent the institution has reasonable concerns for the safety of any person as a result of providing this notice, the institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Note: Adapted from 34 C.F.R. s. 106.46(c)(3).

(4) The ~~university's~~ institution's investigator shall do all of the following:

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

Note: See 34 C.F.R. ss. 106.45(f)(2) & .46(e)(4) & (6).

(am) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.

Note: Adapted from 34 C.F.R. s. 106.46(e)(1).

(b) Prohibit the parties from redisclosing information and evidence the parties obtained solely through the procedures under this subchapter, unless it is for the following purposes: ~~Not restrict the ability of either the faculty member or complainant to discuss the allegations under investigation or to gather and present relevant evidence.~~

1. To obtain and present evidence, including by speaking to witnesses, subject to s. UWS 1.41;

2. To consult with the individual's family members, confidential resources, or advisors;

3. To otherwise prepare for or participate in the procedures under this subchapter;

4. To provide the information to an officer, agent, or employee of the institution with a legitimate need to know the information; or

5. To make a disclosure required or expressly permitted by the operation of law.

Note: Adapted from 34 C.F.R. ss. 106.45(b)(5) & (f)(4)(iii).

(c) Provide ~~the faculty member and complainant~~ all parties 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.

Note: See 34 C.F.R. ss. 106.46(e)(2)-(3).

(cm) Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is otherwise impermissible evidence regardless of relevance.

Note: Adapted from 34 C.F.R. s. 106.45(f)(3).

(d) Provide both the faculty member and the complainant all parties and their advisors 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 Title IX complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a faculty member, complainant, or other source, so that the faculty member and complainant can meaningfully respond to the evidence prior to conclusion of the investigation access the relevant and not otherwise impermissible evidence.

Note: Adapted from 34 C.F.R. ss. 106.45(f)(4)(i) & .46(e)(6).

(e) Objectively evaluate all relevant and not otherwise impermissible evidence—including both inculpatory and exculpatory evidence—and not base credibility determinations on a person's status as complainant, respondent, or witness.

Note: Adapted from 34 C.F.R. s. 106.45(b)(6).

(5) As part of its investigation and disciplinary process, the university institution may not access, consider, disclose, or otherwise use ~~a faculty member's or complainant's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the faculty member or complainant, unless the university obtains the faculty member's or complainant's voluntary, written consent to do so in relation to the investigation and disciplinary process~~ any impermissible evidence as defined by s. UWS 1.19, except as necessary to determine whether an exception in that definition applies.

Note: Adapted from 34 C.F.R. s. 106.45(b)(7).

(6) The university's institution'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~~ for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (1), (3), (4) (d) made under s. 13.92 (4) (b) 12., Stats., Register May 2021 No. 785.

UWS 4.16 Review of evidence.

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

Note: See 34 C.F.R. s. 106.46(f)(4)(ii).

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

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.17 Final investigative report. The investigator shall create a final investigative report that fairly summarizes the relevant and not impermissible evidence and send the report simultaneously to the faculty member, the complainant all parties, and their advisors, if any, for their review and response at least 10 days prior to a hearing. ~~The written report shall be delivered simultaneously to the faculty member and complainant.~~ The university institution shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless both the faculty member and the complainant all parties waive, in writing, the right to such a hearing. If all parties waive their right to a hearing, the hearing examiner or hearing committee shall prepare a decision based on the record.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.18 Standing faculty committee and hearing examiner.

- (1) The chancellor of each university institution, in consultation with faculty representatives, shall adopt policies providing for the designation of a Title IX conduct hearing examiner. The chancellor shall select a hearing examiner pursuant to these policies to hear faculty dismissal and discipline cases. Additionally, the faculty of each university institution shall provide a standing hearing committee charged with hearing faculty dismissal and discipline cases. The chancellor shall appoint the presiding member of the hearing committee, who may be a hearing examiner. The university institution shall decide whether a hearing examiner or a hearing committee will hear the matter.
- (2) The hearing committee or the hearing examiner described in sub. (1) shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held not later than 45 days after completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5) & (g).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.19 Adequate due process.

Note: See 34 C.F.R. ss. 106.45(g) & .46(f).

- (1) A fair hearing for a faculty member against whom seeking dismissal or other discipline is sought of a faculty member for Title IX misconduct shall include all of the following for all parties, subject to the limitations in subsection (2):
 - (a) Service of written notice of a live hearing on the allegations in the ~~formal~~ Title IX complaint at least 10 days prior to the hearing.
 - (b) A right to the names of witnesses and of access to documentary and other evidence upon the basis of which dismissal or other discipline is sought.
 - (c) A right for each party to be heard in the faculty member's defense on their own behalf.
 - (d) A right to an advisor, ~~counsel, or other representatives~~, and to offer witnesses. The faculty member's-Each party's advisor ~~or counsel~~ may ask all witnesses relevant questions and follow-up questions, including those challenging credibility, except as provided in subsection (2). Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. In cases of sex-based harassment involving a student party, if the faculty member any party does not have an advisor, the university institution shall provide the faculty member that party, without charge, an advisor of the university's institution's choice to conduct cross-examination on behalf of the faculty member that party. The advisor may be an attorney. In all other cases of Title IX misconduct, if a party does not

have an advisor, the hearing committee or hearing examiner shall conduct questioning in the manner provided in subsection (2).

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii).

- (e) ~~A right to confront and cross-examine adverse witnesses, subject to subsection (2). The faculty member's or complainant's A party's~~ advisor shall conduct cross examination directly, orally, and in real time, subject to paragraph (i). ~~The faculty member and the complainant A party~~ may not personally conduct cross examination. The hearing examiner or hearing committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing committee or hearing examiner must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions. In cases of sex-based harassment involving a student party, if the faculty member, the complainant, a party or a witness does not submit to cross-examination at the hearing, the hearing committee or the hearing examiner may not rely on any statement of the faculty member, complainant, that party or witness in reaching its findings and recommendations. However, the hearing committee or hearing examiner may not draw a negative inference in reaching its findings and recommendations based solely on the absence of a faculty member, complainant, or witness from the hearing or refusal to answer cross-examination or other questions.

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii) & (4).

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

Note: See 34 C.F.R. s. 106.46(g).

- (g) Written findings of fact and recommendations based on the hearing record. The written findings of fact and recommendations shall include all of the following:

Note: See 34 C.F.R. ss. 106.45(h)(1) & .46(h).

1. ~~Identification A description~~ of the ~~allegations potentially constituting~~ Title IX misconduct.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(i).

2. A description of the procedural steps taken from the receipt of the ~~formal~~ Title IX complaint through the hearing committee's or hearing examiner's completion of written findings and recommendations, including any notifications to the ~~faculty member and the complainant parties~~, interviews with the ~~faculty member, the complainant, parties~~ and witnesses, site visits, methods used to gather evidence, and hearings held.
3. ~~Conclusions regarding the application of the university's conduct rules and policies to the facts; a statement of, and rationale for, the result as to each allegation, including a recommendations regarding responsibility, any disciplinary sanction recommended to be imposed, and whether remedies designed to restore or preserve equal access to the university's educational program or activity will be provided to the complainant. Information about the policies and procedures that the institution used to evaluate the allegations.~~

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(ii).

- ~~3g. An evaluation of the relevant and not otherwise impermissible evidence and determination whether Title IX misconduct occurred.~~

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(iii).

- ~~3m. When the decisionmaker finds that Title IX misconduct occurred, any disciplinary sanctions the institution will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the institution to the complainant, and, to the extent appropriate, other students identified by the institution to be experiencing the effects of the Title IX misconduct.~~

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(iv).

4. The ~~university's institution's~~ procedures and permissible bases for ~~complainant and employee any party~~ to appeal.

Note: See 34 C.F.R. s. 106.46(h)(1)(v).

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

Note: Moved to s. UWS 4.19(2)(b).

- ~~(i) The hearing may be conducted with all participants physically present in the same location, or at the hearing committee's or hearing examiner's discretion, any or all participants may appear at the hearing virtually, with technology enabling the participants simultaneously to see and hear each other. Upon the faculty member's request, the university shall provide for the hearing to occur with faculty member and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the faculty member, and the complainant to simultaneously see and hear witnesses answering questions. Upon the request of any party, the institution must conduct the live hearing with the parties physically present in separate locations, with technology enabling the hearing committee or hearing examiner to simultaneously see and hear the party or the witness while that person is speaking.~~

Note: Adapted from 34 C.F.R. s. 106.46(g).

- ~~(2) The complainant shall have all~~ Notwithstanding the rights provided to the faculty member all parties in sub. (1) (a) to (i), all of the following shall apply:

(a) If a party or witness provides good cause not to be questioned by an advisor and agrees to submit to questioning by the hearing committee or hearing examiner and the hearing committee or hearing examiner finds that such good cause exists, the hearing committee or hearing examiner shall ask all relevant and not otherwise impermissible, unclear, or harassing questions, including those challenging credibility, submitted by a party or their advisor.

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii).

(b) Admissibility of evidence is governed by s. 227.45 (1) to (4), Stats., and s. UWS 4.15(5). Only relevant and not otherwise impermissible, unclear, or harassing questions may be asked of any party or witness. The hearing committee or hearing examiner shall determine whether a question is relevant, otherwise impermissible, unclear, or harassing and explain the decision to exclude a question as not relevant, otherwise impermissible, unclear, or harassing. The hearing committee or hearing examiner must give a party an opportunity to clarify or revise a question that the hearing committee or hearing examiner has determined is unclear or harassing. If a question or revised question is relevant and not otherwise impermissible, unclear, or harassing the question must be asked.

Note: Adapted from 34 C.F.R. s. 106.46(f)(3) & s. UWS 4.19(1)(h).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (1) (a), (g) 2. made under s. 13.92 (4) (b) 12., Stats., and correction in (1) (h) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 4.20 Procedural guarantees.

- ~~(1)~~ Any hearing held shall comply with the requirements set forth in s. UWS 4.19. All of the following requirements shall also be observed:

~~(a)~~(1) The burden of proof of the existence of just cause to support dismissal, or of grounds to support other discipline, is on the university-institution's administration.

~~(am)~~(2) The standard of proof shall be a preponderance of the evidence.

Note: See 34 C.F.R. s. 106.45(h)(1).

~~(b)~~(3) No faculty member who participated in the investigation of ~~a the formal~~ Title IX complaint, or who is a material witness, shall be qualified to sit on the hearing committee addressing that Title IX complaint.

(4) No ~~university~~-employee of the institution or other person who participated in the investigation of ~~a the formal~~ Title IX complaint, or who is a material witness, shall be qualified to serve as the hearing examiner addressing that Title IX complaint.

~~(e)~~(5) The hearing shall be closed unless ~~the faculty member or the complainant~~ any party requests an open hearing, in which case it shall be open.

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

~~(d)~~(6) The hearing committee may, on a motion of the complainant or the faculty member from any party, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under this rule.

~~(e)~~(7) 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 may~~ exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules in s. ~~UWS 4.19 (1) (h)~~ UWS 4.19 (2) (b).

Note: Adapted from 34 C.F.R. s. 106.46(b)(7)(i).

~~(f)~~(8) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the hearing committee concerning its wishes in this regard. The function of legal counsel shall be to advise the hearing committee, consult with them on legal matters, and such other responsibilities as shall be determined by the hearing committee within the provisions of the rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under this policy.

~~(g)~~(9) If the Title IX disciplinary process described in ss. UWS 4.11 to 4.24 against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, the faculty member may elect that such process be carried to a final decision. Unless the faculty member so elects in writing, the process shall be discontinued at the expiration of the appointment.

~~(h)~~(10) Nothing in this section shall prevent the settlement of cases by mutual agreement between the university-institution's administration, the complainant, and the faculty member.

Note: See 34 C.F.R. ss. 106.44(k).

~~(i)~~(11) The hearing committee or hearing examiner may grant a ~~D~~delay or adjournment of the hearing for good cause ~~may be granted with simultaneous notice to all parties that includes the reason for the delay.~~ Good cause includes the need for any of the following:

- ~~1. To investigate evidence as to which a valid claim of surprise is made.~~
- ~~2. To ensure the presence of the faculty member or the complainant, an advisor, or a witness.~~
- ~~3. To provide language assistance or accommodation of disabilities.~~
- ~~4. To accommodate concurrent law enforcement activity.~~

Note: See 34 C.F.R. s. 106.45(b)(4) & .46(e)(5).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.21 Hearing committee or hearing examiner findings and recommendations to the chancellor. The hearing committee or hearing examiner shall simultaneously send to the chancellor, ~~to the complainant,~~ and to ~~the faculty member concerned~~ all parties, within 30 days after the conclusion of the hearing ~~or the waiver of that hearing, or otherwise as soon as practicable,~~ a verbatim record of the testimony and a copy of its factual findings and recommendations. The hearing committee or hearing examiner may extend that timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5) & (g).

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.22 Chancellor's decision.

- (1) Within 20 days after receipt of the record and findings and recommendations from the hearing committee or the hearing examiner the chancellor shall review those materials and afford ~~the faculty member and the complainant~~ all parties an opportunity to discuss them. The chancellor's decision shall be based on the record created before the hearing committee or the hearing examiner. The chancellor shall prepare a written decision within 20 days after completing the meetings with the ~~faculty member and the complainant~~ parties, unless the chancellor's proposed decision differs substantially from the recommendations of the hearing committee or hearing examiner. If the chancellor's proposed decision differs substantially from those recommendations, the chancellor shall promptly consult the hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a decision. The institution may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. s. 106.45(b)(4) & .46(e)(5).

- (2) The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations.
- (3) The chancellor's decision shall be simultaneously sent to ~~the faculty member concerned, the complainant,~~ all parties and to the hearing committee or the hearing examiner. The chancellor's decision also shall be submitted through the president of the system to the board, accompanied by a copy of the hearing committee's or hearing examiner's findings and recommendations. The chancellor's decision and the findings and recommendations shall be forwarded through the president of the system to the board for its review.

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.23 Appeal to board.

Note: See 34 C.F.R. ss. 106.45(i) & .46(i).

- (1) Any party may file an appeal to the board within 30 days of the date of the chancellor's decision. If no appeal is submitted within that timeframe, the chancellor's decision shall be final. In cases of sex-based harassment involving a student party or when termination of the faculty member is sought by any party or the institution, the board shall grant a review if any party appeals. In all other cases of Title IX misconduct, the board, at its discretion, may grant a review. In all cases for which it grants review, the board shall conduct its review on the record and shall provide the faculty member and the complainant all parties an opportunity for filing exceptions to the chancellor's decision, and for making written and oral arguments, unless the faculty member and the complainant waive in writing the right to file exceptions and for oral arguments. The hearing of any oral arguments shall be closed unless ~~the faculty member or the complainant~~ any party requests an open hearing.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5). Adapted from s. UWS 6.01(5). See subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies.

- (2) The ~~faculty member or complainant may file written exceptions to the chancellor's decision, and~~ board shall conduct ~~its any~~ review of ~~the a~~ chancellor's decision ~~it grants~~ on any of the following bases:
- (a) Procedural irregularity that ~~affected would change~~ the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(i).
 - (b) New evidence that was not reasonably available at the time of the live hearing that ~~could~~ would affect change the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(ii).
 - (c) Conflict of interest or bias for or against ~~the faculty member or complainant an individual party,~~ or ~~for or~~ against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that ~~affected would change~~ the outcome.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(iii).
- (3) If the board decides to take action different from the decision of the chancellor, then before taking final action the board shall consult with the chancellor.
- (4) The board shall make its decision based on the record created before the hearing committee or hearing examiner. Within 60 days of receipt of the chancellor's decision, ~~or otherwise as soon as practicable,~~ the board shall simultaneously notify ~~the faculty member and the complainant all parties~~ of the board's final decision, which shall include the board's rationale for its decision. The board may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay.
Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).
- (5) A decision by the board ordering dismissal of a faculty member shall specify the effective date of the dismissal.

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 4.24 Suspension from duties. Pending the final decision on dismissal or other discipline, the faculty member may not normally be relieved of duties; but if, after consultation with appropriate faculty committees the chancellor finds that substantial harm to the university institution may result if the faculty member is continued in the faculty member's position, the faculty member may be relieved immediately of the faculty member's duties, but the faculty member's pay shall continue until a final decision as to dismissal, ~~unless the chancellor also makes the determinations set forth in s. UWS 7.06 in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 7.06 shall apply.~~

History: CR 20-059: cr. Register May 2021 No. 785, eff. 6-1-21.

Chapter UWS 7

PROCEDURES FOR FACULTY DISMISSAL IN SPECIAL CASES

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

History: [CR 06-078](#): cr. [Register May 2007 No. 617](#), eff. 6-1-07; [2015 Wis. Act 330 s. 20](#): am. [Register April 2016 No. 724](#), eff. 5-1-16; [CR 20-060](#): am. [Register May 2021 No. 785](#), eff. 6-1-21.

UWS 7.015 Definitions.

(1g) "Affected party" means any student, employee, visitor, or an individual participating in a university program or activity, who is a victim of a faculty member's serious criminal misconduct.

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

Note: Moved to s. UWS 1.021.

(3) "Complaint" means an allegation against a faculty member reported to an appropriate ~~university~~ official of the institution.

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

Note: Moved to s. UWS 1.025.

~~(5) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."~~

Note: Moved to s. UWS 1.067.

(6) "Serious criminal misconduct" is defined in s. [UWS 7.02](#).

History: [CR 15-061](#): cr. [Register June 2016 No. 726](#), eff. 7-1-16; s. [35.17](#) correction in (2) [Register June 2016 No. 726](#); [CR 20-060](#): r. and recr. (2) [Register May 2021 No. 785](#), eff. 6-1-21; renum. (1), (2) to (1m), (1g) under s. [13.92 \(4\) \(b\) 1.](#), [Stats.](#), [Register May 2021 No. 785](#).

UWS 7.02 Serious criminal misconduct.

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

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

1. Causing serious physical injury to another person.
2. Creating a serious danger to the personal safety of another person.
3. Sexual assault that is not Title IX misconduct.
4. Theft, fraud or embezzlement.
5. Criminal damage to property.
6. Stalking or harassment that is not Title IX misconduct.

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

- (c) The university's ability, or the ability of the faculty member's colleagues, to fulfill teaching, research or public service missions is seriously impaired.
 - (d) The faculty member's fitness or ability to fulfill the duties of the faculty member's position is seriously impaired.
 - (e) The opportunity of students to learn, do research, or engage in public service is seriously impaired.
- (2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute serious criminal misconduct.
 - (3) Except as otherwise expressly provided, a faculty member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. [UWS 7.03](#) to [7.06](#).
 - (4) Any act required or permitted by ss. [UWS 7.03](#) to [7.06](#) to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies approved by the Board of Regents under s. [UWS 2.02](#).
 - (5) Conduct that is actionable as Title IX misconduct shall not be handled under this chapter, but under subchapter III of ch. UWS 4, even if it would also constitute serious criminal misconduct.**

History: [CR 06-078](#); cr. [Register May 2007 No. 617](#), eff. 6-1-07; [2015 Wis. Act 330 s. 20](#); am. (4) [Register April 2016 No. 724](#), eff. 5-1-16; [CR 20-060](#); am. (1) (d) [Register May 2021 No. 785](#), eff. 6-1-21.

UWS 7.03 Dismissal for cause.

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

History: [CR 06-078](#); cr. [Register May 2007 No. 617](#), eff. 6-1-07; [CR 20-060](#); am. (1) [Register May 2021 No. 785](#), eff. 6-1-21.

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

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

UWS 7.05 Expedited process.

- (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. [UWS 7.04](#) or other credible information that a faculty member has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. [UWS 7.02 \(1\) \(a\)](#), in state or federal court, the chancellor shall:
 - (a) Within 3 working days of receipt of the report or information, inform the faculty member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and to advise the chancellor as to whether to proceed under this section or ch. [UWS 4](#). If the **university-institution** knows the identity of an affected party, the **university-institution** shall make a reasonable attempt to notify the affected party of the report or information at the same time as the faculty member.
 - (b) Upon appointing an investigator and notifying the faculty member, afford the faculty member 3 working days in which to request that the investigator be disqualified on grounds of lack of impartiality or other cause. In the event that the chancellor determines that a request for disqualification should be granted, the chancellor shall, within 2 working days of the determination, appoint a different investigator. The faculty member shall have the opportunity

to request that any second or subsequent investigators be disqualified on grounds of lack of impartiality or other cause.

- (2) The investigator shall complete and file a report with the chancellor not later than 10 working days following the investigator's appointment.
- (3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the faculty member pursuant to this chapter, to seek dismissal of the faculty member pursuant to ch. [UWS 4](#), to seek an alternative disciplinary sanction, or to discontinue the proceedings as follows:
 - (a) If the chancellor decides to seek dismissal of the faculty member pursuant to this chapter, the chancellor shall file charges within 2 working days of reaching the decision.
 - (b) If the chancellor decides to seek dismissal of the faculty member pursuant to ch. [UWS 4](#), the chancellor shall file charges and proceed in accordance with the provisions of that chapter and implementing institutional policies. If, during the course of such proceedings under ch. [UWS 4](#), the chancellor receives a report under s. [UWS 7.04](#) or other credible information that the faculty member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. [UWS 7.02 \(1\) \(a\)](#), and one or more of the conditions listed in s. [UWS 7.02 \(1\) \(b\)](#) through [\(e\)](#) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this chapter.
 - (c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under chs. [UWS 4](#) and [6](#), and implementing institutional policies, shall be followed.
- (4) If charges seeking dismissal are filed under sub. [\(3\) \(a\)](#), the faculty member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. [UWS 4.03](#). The hearing shall provide the procedural guarantees enumerated under ss. [UWS 4.05](#) to [4.06](#), except that the hearing shall be concluded, and written findings and a recommendation to the chancellor shall be prepared, within 15 working days of the filing of charges.
- (5) Within 3 working days of receipt of the findings and recommendation of the committee under sub. [\(4\)](#), the chancellor shall prepare a written recommendation on the matter as follows:
 - (a) If the recommendation is for dismissal, the chancellor shall transmit it to the board for review.
 - (b) Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the board at its option grants a review on the record at the request of the faculty member. The faculty member shall receive a copy of the chancellor's final decision. If the identity of an affected party is known to the ~~university institution~~, the ~~university institution~~ shall make a reasonable attempt to provide the affected party a copy of the chancellor's final decision at the same time as the faculty member.
- (6) Upon receipt of the chancellor's recommendation, the full board shall review the record before the institutional hearing committee and shall offer an opportunity for filing exceptions to the recommendation, as well as for oral argument. The full board shall issue its decision on the matter within 15 working days of receipt of the chancellor's recommendation. If the ~~university institution~~ knows the identity of an affected party, the board shall make a reasonable attempt to notify the affected party of its decision at the same time as the faculty member.
- (7) If a faculty member whose dismissal is sought under sub. [\(3\) \(a\)](#) does not proceed with the hearing before the institutional hearing committee as provided in sub. [\(4\)](#), the board shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.
- (8) The ~~administration or its representatives institution~~ shall have the burden of proof to show that just cause exists for dismissal under this chapter. The ~~administration institution~~ shall demonstrate by clear and convincing evidence that the faculty member engaged in serious criminal misconduct, as defined in s. [UWS 7.02](#).

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

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

(8) [Register June 2016 No. 726](#), eff. 7-1-16; [CR 20-060](#): am. (1) (a), (b), (3) (intro.), (c), r. and recr. (5), am. (6),

(8) [Register May 2021 No. 785](#), eff. 6-1-21.

UWS 7.06 Temporary suspension without pay.

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

History: [CR 06-078](#): cr. [Register May 2007 No. 617](#), eff. 6-1-07; [CR 20-060](#): am. (1) (intro.) [Register May 2021 No. 785](#), eff. 6-1-21.

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

Subchapter I — General

UWS 11.01 Dismissal for cause-indefinite academic staff appointments.

- (1) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under ss. [UWS 11.02 to 11.10](#) and [11.29 to 11.33](#) or for reasons of budget or program under ch. [UWS 12](#).
- (2) The board's policy is that members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.
- (3) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. [UWS 11.29](#).
- (4) Indefinite appointment academic staff dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in s. ~~UWS 11.13~~[UWS 1.39](#), shall be governed by ss. [UWS 11.13 to 11.26](#).

History: Cr. Register, October, 1975, No. 236, eff. 11-1-75; CR 06-078: am. (1), cr. (3) Register May 2007, No. 617, eff. 6-1-07; CR 20-061: am. (1), (3), cr. (4) Register May 2021 No. 785, eff. 6-1-21; correction in (1), (4) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.015 Definitions. In this chapter:

- (1) ~~“Chancellor” includes, for cases against employees of system administration only, the President of the University of Wisconsin System.~~

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

Note: Moved to s. [UWS 1.021](#).

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

Note: Replaced by s. [UWS 11.016\(1\)](#).

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

Note: Moved to s. [UWS 1.13](#).

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

Note: Moved to s. [UWS 1.025](#).

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

Note: Moved to s. [UWS 1.4](#).

- (6) ~~“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant~~

shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin as per ss. 813.12 (1) (am) and 968.075, Stats.

Note: Replaced by s. UWS 1.15.

(6m) “Incapacitation” means the state of being unable to physically or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol or drugs affects a person's decision making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

Note: Moved to s. UWS 1.21.

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

Note: Moved to s. UWS 1.067.

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

Note: Replaced by s. UWS 1.33.

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

Note: Moved to s. UWS 1.25.

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

Note: Moved to s. UWS 1.17.

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

Note: Moved to s. UWS 1.22.

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

Note: Moved to s. UWS 1.36.

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

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

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

(b) Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing the complainant to do the same.

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

- (d) ~~Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.~~
- (e) ~~Coercing the complainant to engage in sexual activity for money or anything of value.~~
- (f) ~~Threatening distribution of any of the following, to coerce someone into sexual activity or providing money or anything of value:~~
 - 1. ~~Photos, videos, or recordings depicting private body parts or sexual activity of the complainant.~~
 - 2. ~~Other information of a sexual nature involving the complainant, including sexual history or sexual orientation.~~
- (11) ~~“Stalking” means engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.~~

Note: Moved to s. UWS 1.34.

History: CR 06-078: cr. Register May 2007, No. 617, eff. 6-1-07; CR 15-059: r. and recr. Register June 2016 No. 726, eff. 7-1-16; correction in (2), (8) made under 35.17, Stats., Register June 2016 No. 726; CR 20-061: r. and recr. (intro.), r. (2), cr. (3m), r. and recr. (5), (6), cr. (6m), r. (8), r. and recr. (9) to (11) Register May 2021 No. 785, eff. 6-1-21.

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

UWS 11.016 Subchapter II definitions. In this subchapter:

- (1) “Complaint” means an allegation of misconduct other than Title IX misconduct against an academic staff member reported to an appropriate official of the institution.

Note: Adapted from s. UWS 11.015(2).

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

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

~~(a) *Quid pro quo sexual harassment.*~~

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

Note: Replaced by s. UWS 1.24.

~~(b) *Hostile environment sexual harassment.*~~

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

Note: Replaced by s. UWS 1.18.

Note: The definitions in this section are intended to apply only to Subchapter II.

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; cr. (title) under s. 13.92 (4) (b) 2., Stats., Register May 2021 No. 785.

UWS 11.02 Responsibility for charges.

- (1) Whenever the chancellor of an institution receives an allegation which concerns an academic staff member holding an indefinite appointment which appears to be substantial and which, if true, might lead to dismissal under s. UWS 11.01, the chancellor shall request within a reasonable time that the appropriate dean, director, or designee investigate the allegation. ~~For complaints involving sexual~~

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

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

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; 2015 Wis. Act 330: am. (2) Register April 2016 No. 724, eff. 5-1-16; CR 15-059: am. (1), (2) Register June 2016 No. 726, eff. 7-1-16; merger of (2) treatments by 2015 Wis. Act 335 and CR 15-059 under s. 13.92 (4) (bm), Stats., Register September 2016 No. 729; CR 20-061: am. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.03 Hearing body.

- (1) The chancellor of each institution shall provide for a hearing body charged with hearing dismissal cases and making a report and recommendations under this chapter. Throughout this chapter, the term "hearing body" is used to indicate either a hearing committee or a hearing examiner as designated in the institutional procedures. This hearing body shall operate as the hearing agent for the chancellor pursuant to s. 227.46 (4), Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of fact and decision to the chancellor according to s. UWS 11.07.
- (2) With the concurrence of the faculty and the academic staff advisory committee of each institution, the chancellor may provide that dismissal for cause of a member of the academic staff having teaching responsibilities may be heard by the hearing body specified in s. UWS 4.03. If so provided, the hearing shall be held pursuant to the provisions of ch. UWS 11.

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

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

hearing body established pursuant to s. UWS 11.03. Service of written notice of hearing on the specific charges shall be provided at least 10 days prior to the hearing.

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

UWS 11.05 Adequate due process.

- (1) Each institution shall develop policies and procedures to provide for a fair hearing upon request in the event of dismissal. A fair hearing for an academic staff member whose dismissal is sought under s. UWS 11.01 shall include all of the following:
 - (a) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought.
 - (b) A right to be heard in the academic staff member's defense.
 - (c) A right to an advisor, counsel, or other representative, and to offer witnesses.
 - (d) A right to confront and cross-examine adverse witnesses. ~~For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the hearing committee may reasonably restrict the academic staff member and the complainant from questioning each other.~~
 - (e) A verbatim record of all hearings, which might be a sound recording, provided at no cost.
 - (f) Written findings of fact and decision based on the hearing record.
 - (g) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.
- ~~(2) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, the complainant shall have all the rights provided to the academic staff member in s. UWS 11.05 (1) (a) to (g), except as may be precluded by applicable state or federal law.~~

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction in (1) (g) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617; CR 15-059: am. (1) (c), (d), cr. (2); Register June 2016 No. 726; correction in (2) under 35.17, Stats., Register June 2016 No. 726, eff. 7-1-16; CR 20-061: am. (1) (intro.), (a), (b), (d) to (f), (2) Register May 2021 No. 785, eff. 6-1-21; correction in (1) (c) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.06 Procedural guarantees.

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

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

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

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 15-059: cr. (1) (dm), am. (1) (f), (2) (a) Register June 2016 No. 726, eff. 7-1-16; CR 20-061: am. (1) (a) to (f), (2) (a) Register May 2021 No. 785, eff. 6-1-21; **correction in (1) (d) made under s. 35.17, Stats., Register June 2021 No. 786.**

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

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 15-059: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-061: am. Register May 2021 No. 785, eff. 6-1-21; correction made under s. 13.92 (4) (b) 7., Stats., Register May 2021 No. 785.

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

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 06-078: am. Register May 2007 No. 617, eff. 6-1-07; CR 20-061: am. Register May 2021 No. 785, eff. 6-1-21.

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

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

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

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 15-059: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-061: am. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.11 Dismissal for cause-fixed term or probationary academic staff appointments. A member of the academic staff holding a probationary appointment, or a member of the academic staff holding a fixed term appointment and having completed an initial specified period of time, may be dismissed prior to the end of the contract term only for just cause or for reasons of budget or program under ch. UWS 12. A nonrenewal of such an appointment is not a dismissal under this section. A dismissal shall not become effective until the individual concerned has received a written notification of specific charges and has been offered an opportunity for a hearing before the appropriate dean or director or designee. If such hearing is requested, a determination of just cause and notification of dismissal shall be made by the dean or director or designee. If no hearing is requested the dismissal is effected by the specifications in the original notification of charges. The hearing before the dean, director, or designee shall provide the academic staff member with an opportunity to present evidence and argument concerning the allegations. Dismissal shall be effective immediately on receipt of written notification of the decision of the dean or director or designee unless a different dismissal date is specified by the dean or director. Dismissals for cause shall be appealable by filing an appeal with the hearing body established under s. UWS 11.03. The burden of proof as to the existence of just cause on appeal shall be on the administration or the authorized official. The provisions of s. UWS 11.04, procedural guarantees, contained in ss. UWS 11.05 and 11.06 and the review provisions of s. UWS 11.07, shall be applicable to the appeal proceeding. In no event, however, shall a decision favorable to the appellant extend the term of the original appointment. If a proceeding on appeal is not concluded before the appointment expiration date, the academic staff member concerned may elect that such proceeding be carried to a final decision. Unless such election is made in writing, the proceeding shall be discontinued at the expiration of the appointment. If the chancellor ultimately decides in favor of the appellant, salary lost during the interim period between the effective date of dismissal and the date of the chancellor's decision or the end of the contract period, whichever is earlier, shall be restored. In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid potential prejudice, designate an appropriate administrative officer to act for the dean or director under this section. ~~For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the complainant shall have all procedural rights provided to the academic staff member in this section and the standard of proof shall be by a preponderance of the evidence.~~ Dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in s. ~~UWS 11.13~~UWS 1.39, shall be governed by ss. UWS 11.13 to 11.26.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 15-059: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-061: am. Register May 2021 No. 785, eff. 6-1-21; correction made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.12 Dismissal for cause-teaching members of the academic staff. The policies and procedures of each institution may provide that dismissal for cause of a member of the academic staff having teaching responsibilities and holding a probationary appointment or a fixed term appointment may proceed under ss. [UWS 11.02 to 11.10](#). If the institutional policies and procedures do not specifically make such provisions, dismissal for cause shall be made pursuant to s. [UWS 11.11](#). Dismissal for cause and lesser discipline based on allegations of Title IX misconduct as defined in s. ~~UWS 11.13~~[UWS 1.39](#) shall be governed by ss. [UWS 11.13 to 11.26](#).

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; CR 20-061: am. Register May 2021 No. 785, eff. 6-1-21; correction made under s. 35.17, Stats., Register May 2021 No. 785.

Subchapter III — Procedures for Academic Staff Dismissal and Discipline in Title IX Cases

~~**UWS 11.13 — Subchapter III definitions.**~~ In this subchapter:

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

~~**Note:** Replaced by s. [UWS 1.11](#).~~

~~(2) “Education program or activity” means, for purposes of Title IX misconduct only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.~~

~~**Note:** Replaced by s. [UWS 1.16](#).~~

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

~~**Note:** Replaced by s. [UWS 1.38](#).~~

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

~~**Note:** Replaced by s. [UWS 1.28](#).~~

~~(5) “Sexual harassment” means conduct on the basis of sex that satisfies any of the following:~~

~~(a) An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct.~~

~~**Note:** Replaced by s. [UWS 1.24](#).~~

~~(b) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard, the conduct is so severe, pervasive, and objectionably offensive that it effectively denies the person equal access to the institution's education program or activity.~~

~~**Note:** Replaced by s. [UWS 1.18](#).~~

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

~~**Note:** Replaced by ss. [UWS 1.31 & .39](#).~~

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (intro.) made under s. 35.17, Stats., Register May 2021 No. 785.

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

- (1) An academic staff member may be dismissed for cause, or subject to lesser discipline, including, but not limited to, a written reprimand, mandatory training, and/or a suspension without pay, for Title IX misconduct as the term is defined in s. UWS 11.13 UWS 1.39.

Note: See 34 C.F.R. s. 106.45(l)(2).

- (2) Title IX misconduct allegations complaints against academic staff shall follow the disciplinary procedure in ss. UWS 11.13 to 11.26. If a Title IX complaint is consolidated with an allegation of non-Title IX misconduct pursuant to s. UWS 11.17(3) the institution shall use the procedures in this subchapter. An academic staff member may be dismissed only for just cause and may otherwise be disciplined only after due notice and hearing.

Note: See 34 C.F.R. s. 106.45(b)(8).

- (3) ~~The board's policy is that members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. The policy stated in s. UWS 11.01(2) applies to all cases under this subchapter.~~ This policy shall be observed in determining whether or not just cause for dismissal, or grounds for other discipline, exists. The burden of proof of the existence of just cause for a dismissal, or grounds for other discipline, is on the administration.

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

Note: See 34 C.F.R. ss. 106.45(b)(3) & .46(c)(1)(i).

- (5) No person designated as a Title IX Coordinator or as an investigator, decision maker, hearing committee member, or hearing examiner for any Title IX complaint may have a conflict of interest or bias for or against complainants or respondents generally or an individual party. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

Note: Adapted from 34 C.F.R. s. 106.45(b)(2).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

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

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

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

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

- ~~(1) The university shall dismiss formal Title IX complaints consisting of allegations that meet any of the following conditions:~~
 - ~~(a) The alleged conduct would not constitute Title IX misconduct if proved.~~
 - ~~(b) The alleged conduct did not occur in a university education program or activity.~~
 - ~~(c) The alleged conduct did not involve actions against someone physically located in the United States.~~
- (2) The university institution may dismiss formal a Title IX complaints under against an academic staff member when any of the following conditions applies:
 - (a) The institution is unable to identify the respondent after taking reasonable steps to do so. The complainant formally requests in writing to withdraw the formal Title IX complaint.

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(i).

- (b) The respondent is not participating in the institution's education program or activity and is not employed by the institution. The academic staff member is no longer employed by the university.

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(ii).

- (c) The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under s. UWS 1.12, and the institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the Title IX complaint, if any, would not constitute Title IX misconduct even if proven. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal Title IX complaint. When dismissing a complaint alleging sex-based harassment involving a student party, an institution must obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations.

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(iii) & .46(d)(2).

- (d) The institution determines the conduct alleged in the Title IX complaint, even if proven, would not constitute Title IX misconduct. Prior to dismissing the complaint under this paragraph, the institution must make reasonable efforts to clarify the allegations with the complainant.

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(iv).

- (3) The university-institution generally shall generally decide whether to dismiss a formal Title IX complaint within 30 days of its receipt of the formal Title IX complaint, but the university-The institution may extend this a timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. If a formal Title IX complaint is dismissed, the university-institution shall provide notice simultaneously notify all parties of the dismissal in writing, and including the reasons for the dismissal and any bases for an appeal of the dismissal therefore to the academic staff member and complainant in writing.

Note: See 34 C.F.R. ss. 106.45(b)(4) & (d)(2)-(3) & .46(d)(1) & (e)(5).

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

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

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

Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(i).

- (b) New evidence that was not reasonably available at the time of the dismissal that could would affect change the outcome of the matter.

Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(ii).

- (c) The university-employee of the institution making the dismissal decision had a conflict of interest or bias for the academic staff member or against the complainant an individual party, or for or against complainants or respondents generally, that affected would change the dismissal decision.

Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(iii).

- (4m) If the dismissal is appealed, the institution must notify the parties of any appeal, including notice of the allegations consistent with s. 11.17(2) if notice was not previously provided to the respondent.

Note: See 34 C.F.R. s. 106.45(d)(3).

- (5) The chancellor shall provide the academic staff member and complainant all parties the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor shall simultaneously issue a decision to the complainant and the academic staff member all parties within 30 days of receipt of a written appeal. The institution may extend this timeline as necessary for

good cause and with simultaneous notice to all parties that includes the reason for the delay. The chancellor's decision on the appeal of a dismissal shall include the chancellor's rationale for the decision and shall be final.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

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

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.17 Investigation of Title IX complaint misconduct allegations.

- (1) Unless the ~~university institution~~ dismisses a ~~formal Title IX~~ complaint, the ~~university institution~~ shall appoint an investigator to conduct an investigation of the allegations in the ~~formal Title IX~~ complaint. The burden is on the institution—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Title IX misconduct occurred.

Note: Adapted from 34 C.F.R. s. 106.45(f)(1).

- (2) The investigator shall provide ~~the academic staff member and the complainant~~ all parties with a notice of investigation. The notice shall include all of the following information:

- (a) The grievance process, including informal resolution options.

Note: See 34 C.F.R. s. 106.45(c)(1)(i).

- (b) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute Title IX misconduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the institution. The allegations of Title IX misconduct with sufficient detail for the academic staff member to prepare a response to the allegations, including the identity of the complainant as well as the date and location of the incident if available.

Note: Adapted from 34 C.F.R. s. 106.45(c)(1)(ii).

- (bm) A statement that Title IX retaliation is prohibited.

Note: Adapted from 34 C.F.R. s. 106.45(c)(1)(iii).

- (c) A statement affirming the academic staff member is presumed not responsible for the alleged ~~violation until the disciplinary process finds otherwise. Title IX misconduct until a determination is made pursuant to this subchapter and that prior to the determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.~~

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(i).

- (d) ~~The academic staff member and complainant~~ All parties have the right to an advisor of their choice to serve in the role set out in this subchapter, and that advisor may be, but is not required to be, an attorney.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(ii).

- (e) ~~The academic staff member and complainant~~ All parties have the right to inspect and review the relevant and not otherwise impermissible evidence.

Note: Adapted from 34 C.F.R. ss. 106.45(c)(1)(iv) & .46(c)(1)(iii).

- (f) Information about any code of conduct rules which prohibit ~~the academic staff member or the complainant~~ any party from knowingly making false statements or submitting false information during the disciplinary process.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(iv).

- (3) ~~The~~ All parties shall receive an amended notice of investigation any time additional charges are added or any charges are materially amended or consolidated with other charges 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. Title IX complaints may be consolidated with cases of non-Title IX misconduct if they arise out of the same facts or circumstances.

Note: See 34 C.F.R. ss. 106.45(c)(2) & .46(c)(2).

(3m) To the extent the institution has reasonable concerns for the safety of any person as a result of providing this notice, the institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Note: Adapted from 34 C.F.R. s. 106.46(c)(3).

(4) ~~The university's~~ institution's investigator shall do all of the following:

(a) ~~Provide both the academic staff member and the complainant~~ all parties an equal opportunity to provide witnesses, including fact and expert witnesses, who may be interviewed by the investigators and other inculpatory and exculpatory evidence.

Note: See 34 C.F.R. ss. 106.45(f)(2) & .46(e)(4) & (6).

(am) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.

Note: Adapted from 34 C.F.R. s. 106.46(e)(1).

(b) Prohibit the parties from redisclosing information and evidence the parties obtained solely through the procedures under this subchapter, unless it is for the following purposes:~~Not restrict the ability of either the academic staff member or complainant to discuss the allegations under investigation or to gather and present relevant evidence.~~

1. To obtain and present evidence, including by speaking to witnesses, subject to s. UWS 1.41;
2. To consult with the individual's family members, confidential resources, or advisors;
3. To otherwise prepare for or participate in the procedures under this subchapter;
4. To provide the information to an officer, agent, or employee of the institution with a legitimate need to know the information; or
5. To make a disclosure required or expressly permitted by the operation of law.

Note: Adapted from 34 C.F.R. ss. 106.45(b)(5) & (f)(4)(iii).

(c) ~~Provide the academic staff member and complainant~~ all parties 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.

Note: See 34 C.F.R. ss. 106.46(e)(2)-(3).

(cm) Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is otherwise impermissible evidence regardless of relevance.

Note: Adapted from 34 C.F.R. s. 106.45(f)(3).

(d) ~~Provide both the academic staff member and the complainant~~ all parties an equal opportunity to ~~inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from an academic staff member, complainant, or other source, so that the academic staff member and complainant can meaningfully respond to the evidence prior to conclusion of the investigation~~ access the relevant and not otherwise impermissible evidence.

(e) Objectively evaluate all relevant and not otherwise impermissible evidence—including both inculpatory and exculpatory evidence—and not base credibility determinations on a person's status as complainant, respondent, or witness.

Note: Adapted from 34 C.F.R. s. 106.45(b)(6).

- (5) As part of its investigation and disciplinary process, the university-institution may not access, consider, disclose, or otherwise use ~~an academic staff member's or complainant's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the academic staff member or complainant, unless the university obtains the academic staff member's or complainant's voluntary, written consent to do so in relation to the investigation and disciplinary process~~ any impermissible evidence as defined by s. UWS 1.19, except as necessary to determine whether an exception in that definition applies.

Note: Adapted from 34 C.F.R. s. 106.45(b)(7).

- (6) The university's-institution'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 for good cause and with simultaneous notice to all parties that includes the reason for the delay.~~

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (2) (b), (4) (c) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.18 Review of evidence.

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

Note: See 34 C.F.R. s. 106.46(f)(4)(ii).

- (2) ~~The academic staff member and the complainant~~ All parties shall have be provided at least 10 days to submit a written response to the evidence. The investigator shall consider any written responses submitted within that timeframe prior to completion of the final investigative report.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.19 Final investigative report. The investigator shall create a final investigative report that fairly summarizes the relevant and not impermissible evidence and send the report simultaneously to ~~the academic staff member, the complainant, all parties~~ and their advisors, if any, for their review and response at least 10 days prior to a hearing. ~~The written report shall be delivered simultaneously to the academic staff member and complainant at least 10 days prior to a hearing.~~ The university-institution shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless ~~the academic staff member and the complainant both~~ all parties waive, in writing, the right to such a hearing. If all parties waive their right to a hearing, the hearing examiner or hearing committee shall prepare a decision based on the record.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.20 Standing academic staff committee and hearing examiner.

- (1) The chancellor of each university institution, in consultation with academic staff representatives, shall adopt policies providing for the designation of a Title IX misconduct hearing examiner. The

chancellor shall select hearing examiners pursuant to these policies to hear academic staff dismissal and discipline cases. Additionally, the academic staff of each university-institution shall provide a standing hearing committee charged with hearing academic staff dismissal and discipline cases. The chancellor shall appoint the presiding member of the hearing committee, who may be a hearing examiner. The academic staff member-institution shall have the right to decide whether a hearing examiner or a hearing committee will hear the matter.

Note: The last sentence of sub. (1) should read “the university”, not “the academic staff member.” The intent was for the university to make this decision. This will be corrected in future rulemaking.

- (2) The hearing committee or the hearing examiner shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held no later than 45 days after completion of the final investigative report except that this time limit may be extended by the hearing committee or the hearing examiner for good cause and with simultaneous notice all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5) & (g).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.21 Adequate due process.

Note: See 34 C.F.R. ss. 106.45(g) & .46(f).

- (1) A fair hearing for an academic staff member against whom seeking dismissal or other discipline is sought of an academic staff member for Title IX misconduct shall include all of the following for all parties, subject to the limitations in subsection (2):

- (a) Service of written notice of a live hearing on the allegations in the formal-Title IX complaint at least 10 days prior to the hearing.
- (b) A right to the names of witnesses and of access to documentary and other evidence which serve as the basis for seeking dismissal or other discipline.
- (c) A right for the complainant and academic staff member each party to be heard on their own behalf.
- (d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The academic staff member's or complainant's-Each party's advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility, except as provided in subsection (2). Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. In cases of sex-based harassment involving a student party, if the academic staff member-any party does not have an advisor, the university-institution shall provide the academic staff member that party, without charge, an advisor of the university's-institution's choice to conduct cross-examination on behalf of the academic staff member that party. The advisor may be an attorney. In all other cases of Title IX misconduct, if a party does not have an advisor, the hearing committee or hearing examiner shall conduct questioning in the manner provided in subsection (2).

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii).

- (e) A right to confront and cross-examine adverse witnesses, subject to subsection (2). The academic staff member's or complainant's-A party's advisor shall conduct cross examination directly, orally, and in real time, subject to paragraph (i). The academic staff member and the complainant-A party may not personally conduct cross examination. The hearing examiner or hearing committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing committee or hearing examiner must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions. If the academic staff member, the complainant, or a witness does not submit to cross-examination at the hearing, the hearing committee or the hearing examiner may not

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

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii) & (4).

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

Note: See 34 C.F.R. s. 106.46(g).

- (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:

Note: See 34 C.F.R. ss. 106.45(h)(1) & .46(h).

1. ~~Identification~~ A description of the allegations potentially constituting Title IX misconduct.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(i).

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

3. Information about the policies and procedures that the institution used to evaluate the allegations. 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

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(ii).

4. An evaluation of the relevant and not otherwise impermissible evidence and determination whether Title IX misconduct occurred.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(iii).

5. When the decisionmaker finds that Title IX misconduct occurred, any disciplinary sanctions the institution will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the institution to the complainant, and, to the extent appropriate, other students identified by the institution to be experiencing the effects of the Title IX misconduct.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(iv).

6. ~~¶The university's institution's~~ procedures and permissible bases for complainant and academic staff member any party to appeal.

Note: See 34 C.F.R. s. 106.46(h)(1)(v).

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

Note: Moved to s. UWS 11.21(2)(b).

(i) Upon the request of any party, the institution must conduct the live hearing with the parties physically present in separate locations, with technology enabling the hearing committee or hearing examiner to simultaneously see and hear the party or the witness while that person is speaking. Upon the academic staff member's request, the university shall provide for the hearing to occur with academic staff member and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the academic staff member, and the complainant to simultaneously see and hear witnesses answering questions.

Note: Adapted from 34 C.F.R. s. 106.46(f)(3).

(2) The complainant shall have all ~~Notwithstanding the rights provided to the academic staff member~~ all parties in sub. (1) (a) to (i), all of the following shall apply:-

(a) If a party or witness provides good cause not to be questioned by an advisor and agrees to submit to questioning by the hearing committee or hearing examiner and the hearing committee or hearing examiner finds that such good cause exists, the hearing committee or hearing examiner shall ask all relevant and not otherwise impermissible, unclear, or harassing questions, including those challenging credibility, submitted by a party or their advisor.

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii).

(b) Admissibility of evidence is governed by s. 227.45 (1) to (4), Stats., UWS 11.17(5). Only relevant and not otherwise impermissible, unclear, or harassing questions may be asked of any party or witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant, otherwise impermissible, unclear, or harassing and explain the decision to exclude a question as not relevant, otherwise impermissible, unclear, or harassing. The hearing committee or hearing examiner must give a party or their advisor an opportunity to clarify or revise a question that the hearing committee or hearing examiner has determined is unclear or harassing. If a question or revised question is relevant and not otherwise impermissible, unclear, or harassing the question must be asked.

Note: Adapted from 34 C.F.R. ss. 106.46(f)(3) & s. UWS 4.15(1)(h).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (1) (h) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.22 Procedural guarantees.

~~(1)~~—Any hearing held shall comply with the requirements set forth in UWS 11.21. All of the following requirements shall also be observed:

~~(1)(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~~ institution's administration.

~~(2)(b)~~ The standard of proof shall be a preponderance of the evidence.

Note: See 34 C.F.R. s. 106.45(h)(1).

~~(3)(e)~~ No academic staff member who participated in the investigation of ~~allegations leading to the filing of a statement of charges~~ the Title IX complaint, 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~~ addressing that Title IX complaint.

~~(4)(d)~~ No ~~university~~ employee of the institution or other person who participated in the investigation of ~~allegations leading to the filing of a statement of charges~~ the Title IX complaint, 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 addressing that case~~ Title IX complaint.

~~(5)(e)~~ The hearing shall be closed unless ~~the academic staff member~~ any party requests an open hearing, in which case it shall be open.

Note: This right was intended to be given to the complainant as well. This will be corrected in future rulemaking.

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

~~(6)(f)~~ The hearing committee may, on a motion of the complainant or the academic staff member from any party, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the academic staff equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the academic staff establishing the standing committee under this rule.

~~(7)(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 may exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules in s. ~~UWS 11.21 (1) (h)~~ UWS 11.21 (2) (b).

Note: Adapted from 34 C.F.R. s. 106.46(b)(7)(i).

~~(8)(h)~~ If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the hearing committee concerning its wishes in this regard. The function of legal counsel shall be to advise the hearing committee, consult with them on legal matters, and such other responsibilities as shall be determined by the hearing committee within the provisions of the rules and procedures adopted by the academic staff of the institution in establishing the standing academic staff committee under this policy.

~~(9)(i)~~ Nothing in this section shall prevent the settlement of cases by mutual agreement between the university institution's administration, the complainant, and the academic staff member.

Note: See 34 C.F.R. ss. 106.44(k).

~~(10)(j)~~ The hearing committee or hearing examiner may grant a Ddelay or adjournment of the hearing for good cause may be granted with simultaneous notice to all parties that includes the reason for the delay. Good cause includes any of the following:

- ~~1. The need to investigate evidence as to which a valid claim of surprise is made.~~
- ~~2. To ensure the presence of the academic staff member or the complainant, an advisor, or a witness.~~
- ~~3. To provide language assistance or accommodation of disabilities.~~
- ~~4. To accommodate concurrent law enforcement activity.~~

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (intro.) made under s. 13.92 (4) (b) 3., Stats., Register May 2021 No. 785.

UWS 11.23 Hearing committee or hearing examiner findings and recommendations to the chancellor. The hearing committee or hearing examiner shall simultaneously send to the chancellor, ~~to the complainant,~~ and to ~~the academic staff member concerned~~ all parties, within 30 days after the conclusion of the hearing or waiver of that hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations. The hearing committee or hearing examiner may extend that timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5) & (g).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.24 Chancellor's decision.

- (1) After reviewing the matter on record and considering any arguments submitted by the parties, the chancellor shall issue a decision. The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations. If the chancellor's proposed decision differs substantially from those recommendations, the chancellor shall promptly consult the hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a

decision. In that decision, the chancellor may order dismissal of the academic staff member, may impose a lesser disciplinary action, or may find in favor of the academic staff member. ~~The academic staff member~~ All parties shall be notified simultaneously of the chancellor's decision in writing. ~~The complainant shall be notified of the chancellor's decision at the same time as the academic staff member.~~ This decision shall be deemed final unless the board, upon request of ~~the academic staff member or complainant~~ any party, grants review based on the record.

- (2) The chancellor's decision shall be based on the record created before the hearing committee or hearing examiner, and the chancellor shall include the chancellor's rationale in the decision. The chancellor's decision shall be simultaneously sent to the academic staff member concerned, the complainant, and to the hearing committee or the hearing examiner within 45 days of the chancellor's receipt of the hearing committee's or hearing examiner's materials. The institution may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. A decision by the chancellor ordering dismissal shall specify the effective date of the dismissal.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (2) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.25 Appeal to the board.

Note: See 34 C.F.R. ss. 106.45(i) & .46(i).

- (1) ~~The academic staff member or complainant may file an appeal of the chancellor's decision to the board.~~ Any party may appeal ~~must be made to the board~~ within 30 days of the date of the decision of the chancellor ~~to dismiss.~~ If no appeal is submitted within that timeframe, the chancellor's decision shall be final. In cases of sex-based harassment involving a student party or when termination of an academic staff member with an indefinite appointment is sought by any party or the institution, the board shall grant a review if any party appeals. In all other cases of Title IX misconduct, the board, at its discretion, may grant a review. In all cases for which it grants review, the board shall conduct its review on the record and shall provide the academic staff member and complainant all parties an opportunity for filing written exceptions to the chancellor's decision, and for making written and oral arguments, unless the academic staff member and the complainant waive in writing the right to file exceptions and for oral arguments. The hearing of any oral arguments shall be closed unless ~~the academic staff member or the complainant~~ any party requests an open hearing.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5). See subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies.

- (2) ~~The academic staff member or complainant may file exceptions to the chancellor's decision, and the board shall conduct its any review of the a chancellor's decision it grants~~ on any of the following bases:
- (a) Procedural irregularity that ~~affected would change~~ the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(i).
 - (b) New evidence that was not reasonably available at the time of the live hearing that ~~could~~ would affect change the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(ii).
 - (c) Conflict of interest or bias for or against ~~the academic staff member or complainant~~ an individual party, or for or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that ~~affected would change~~ the outcome.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(iii).
- (3) If the board decides to take action different from the decision of the chancellor, then before taking final action the board shall consult with the chancellor.

- (4) The board shall make its decision based on the record created before the hearing committee or hearing examiner. Within 60 days of receipt of the chancellor's decision, ~~or otherwise as soon as practicable~~, the board shall simultaneously notify ~~the academic staff member and the complainant~~ all parties of the board's final decision, which shall include the board's rationale for its decision. The board may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

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

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (1) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.26 Suspension from duties in Title IX misconduct dismissal cases. Pending the final decision as to dismissal, an academic staff member with an indefinite appointment may not be relieved of duties, except where, after consulting with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in the staff member's position. Where such determination is made, the staff member may be relieved of the staff member's position immediately, or be assigned to another administrative unit, but the staff member's salary shall continue until the chancellor makes a decision as to dismissal, ~~unless the chancellor also makes the determinations set forth in s. UWS 11.32 (1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 11.32 shall apply.~~

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

Subchapter IV — Procedures for Dismissal for Cause in Special Cases – Indefinite Academic Staff Appointments

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

History: CR 20-061: cr. Register May 2021 No. 785, eff. 6-1-21.

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

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 20-061: renum. from UWS 11.101 and am. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.29 Serious criminal misconduct.

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

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

1. Causing serious physical injury to another person.
2. Creating a serious danger to the personal safety of another person.
3. Sexual assault that is not Title IX misconduct.
4. Theft, fraud or embezzlement.
5. Criminal damage to property.
6. Stalking or harassment that is not Title IX misconduct.

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

- (c) The university's ability, or the ability of the academic staff member's colleagues, to fulfill teaching, research or public service missions is seriously impaired.
 - (d) The academic staff member's fitness or ability to fulfill the duties of their position is seriously impaired.
 - (e) The opportunity of students to learn, do research, or engage in public service is seriously impaired.
- (2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute serious criminal misconduct.
 - (3) Except as otherwise expressly provided, an academic staff member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. [UWS 11.30](#) to [11.33](#).
 - (4) Any act required or permitted by ss. [UWS 11.30](#) to [11.33](#) to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies forwarded to the Board of Regents under s. [UWS 9.02](#).
 - (5) Conduct that is actionable as Title IX misconduct shall not be handled under this subchapter, but under subchapter III, even if it would also constitute serious criminal misconduct.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; 2015 Wis. Act 330 s. 20: am. (4) Register April 2016 No. 724, eff. 5-1-16; CR 20-061: renum. from UWS 11.102 and am. (1) (d), (3), (4) Register May 2021 No. 785, eff. 6-1-21.

UWS 11.30 Reporting responsibility. Any academic staff member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. [UWS 11.29 \(1\) \(a\)](#) or that would constitute Title IX misconduct, in state or federal court, shall immediately report that fact to the chancellor.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 20-061: renum. from UWS 11.103 and am. Register May 2021 No. 785, eff. 6-1-21.

UWS 11.31 Expedited process.

- (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. [UWS 11.30](#) or other credible information that an academic staff member holding an indefinite appointment has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. [UWS 11.29 \(1\) \(a\)](#), in state or federal court, the chancellor shall:
 - (a) Within 3 working days of receipt of the report or information, inform the academic staff member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and advise the chancellor as to whether to proceed under this section or ss. [UWS 11.02](#) to [11.10](#) or ss. [UWS 11.13](#) to [11.26](#). If the university institution knows the identity of an affected party, the university-institution shall make a reasonable attempt to notify the affected party of the report or information at the same time as the academic staff member.
 - (b) Upon appointing an investigator and notifying the academic staff member, afford the academic staff member 3 working days in which to request that the investigator be disqualified on grounds of lack of impartiality or other cause. In the event that the chancellor determines that a request for disqualification should be granted, the chancellor shall, within 2 working days of the determination, appoint a different investigator. The academic staff member shall have the opportunity to request that any second or subsequent investigators be disqualified on grounds of lack of impartiality or other cause.
- (2) The investigator shall be complete and file a report with the chancellor not later than 10 working days following the investigator's appointment.
- (3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the academic staff member pursuant to ss. [UWS 11.28](#) to [11.33](#), to seek dismissal of the academic staff member pursuant to ss. [UWS 11.02](#) to [11.10](#), to seek dismissal of the academic staff member

pursuant to ss. UWS 11.13 to 11.25, to seek an alternative disciplinary sanction, or to discontinue the proceedings as follows:

- (a) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.28 to 11.33, the chancellor shall file charges within 2 working days of reaching the decision.
- (b) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26, the chancellor shall file charges and proceed in accordance with the provisions of those sections of this chapter and implementing institutional policies. If, during the course of proceedings under ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26, the chancellor receives a report under s. UWS 11.30 or other credible information that the academic staff member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. UWS 11.29 (1) (a), and one or more of the factors listed in s. UWS 11.29 (1) (b) to (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this section.
- (c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 13 or ss. UWS 11.13 to 11.26, and implementing institutional policies, shall be followed.
- (4) If charges seeking dismissal are filed under sub. (3) (a), the academic staff member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 11.03. The hearing shall provide the procedural guarantees enumerated under ss. UWS 11.05 to 11.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.
- (5) Within 3 working days of receipt of the findings and recommendation of the committee under sub. (4), the chancellor shall prepare a written decision on the matter. In the decision, the chancellor may order dismissal of the staff member, may impose a lesser disciplinary action, or may find in favor of the staff member. The staff member shall be notified of the chancellor's decision in writing. If the ~~university-institution~~ knows the identity of an affected party, the ~~university-institution~~ shall make a reasonable attempt to provide the affected party a copy of the chancellor's final decision at the same time as the academic staff member. This decision shall be deemed final unless the board, upon request of the academic staff member, grants a review based on the record.
- (6) The ~~administration or its representatives-institution~~ shall have the burden of proof to show that just cause exists for dismissal under this chapter. The ~~administration-institution~~ shall demonstrate by clear and convincing evidence that the academic staff member engaged in serious criminal misconduct, as defined in s. UWS 11.29.
- (7) The chair of the academic staff hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 15-059: am. (1) (a), (b), (5), r. and recr. (6) Register June 2016 No. 726, eff. 7-1-16; CR 20-061: renum. from UWS 11.104 and am. (1), (3), (5), (6) Register May 2021 No. 785, eff. 6-1-21; correction in (3) (b), (5) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.32 Temporary suspension from duties without pay.

- (1) The chancellor, after consulting with appropriate academic staff governance representatives, may suspend an academic staff member holding an indefinite appointment from duties without pay pending the final decision as to dismissal where:
 - (a) The academic staff member has been charged with a felony of a type listed in s. UWS 11.29 (1) (a) and the chancellor, after following the provisions of s. UWS 11.31 (1) to (3), finds, in addition, that there is a substantial likelihood 1) that one or more of the conditions listed in s. UWS 11.29 (1) (b) to (e) are present, and 2) that the academic staff member has engaged in the conduct as alleged; or

- (b) The academic staff member is unable to report for work due to incarceration, conditions of bail or similar cause; or
 - (c) The academic staff member has pleaded guilty or no contest to or been convicted of a felony of the type listed in s. UWS 11.29 (1) (a) and one or more of the conditions in s. UWS 11.29 (1) (b) to (e) are present.
- (2) If the chancellor finds that the conditions in sub. (1) are present, he or she shall immediately notify the academic staff member, in writing, of the intent to impose a suspension without pay, and shall, within 2 working days, provide the academic staff member with an opportunity to be heard with regard to the matter. The academic staff member may be represented by counsel or another at this meeting.
- (3) If, after affording the academic staff member the opportunity to be heard, the chancellor determines to suspend without pay, the chancellor shall inform the academic staff member of the suspension, in writing. The chancellor's decision to suspend without pay under this section shall be final, except that:
- (a) If the chancellor later determines that the academic staff member should not be dismissed the chancellor may discontinue the proceedings, or may impose a lesser penalty, and except as provided in par. (b), shall order the payment of back pay for any period of the suspension for which the academic staff member was willing and able to report for work;
 - (b) If the chancellor later determines to recommend or impose as a lesser penalty the suspension of the academic staff member without pay, then any period of suspension without pay so recommended or ordered shall be offset by the period of any suspension without pay actually served by the academic staff member.
- (4) If, after affording the academic staff member the opportunity to be heard, the chancellor determines that the conditions in sub. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 11.08 shall apply.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 20-061: renum. from UWS 11.105 and am. (1) (intro.), (a), (c), renum. (3) (a) to (c) to (3) (intro.), (a), (b) and, as renumbered, am. (3) (a), (b) Register May 2021 No. 785, eff. 6-1-21; correction in (1) (a), (c) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 11.33 Board review. A member of the academic staff on an indefinite appointment who has been dismissed for serious criminal misconduct may appeal this action to the board as provided in s. UWS 11.10. If the university-institution knows the identity of an affected party, the board shall make a reasonable attempt to notify the affected party of its decision at the same time as the academic staff member.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07; CR 20-061: renum. from UWS 11.106 and am. Register May 2021 No. 785, eff. 6-1-21.

Chapter UWS 17

STUDENT NONACADEMIC DISCIPLINARY PROCEDURES

Subchapter I — General

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

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.02 Definitions. In this chapter:

- (1) “Admission” means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by an institution.

Note: Adapted from 34 C.F.R. s. 106.2 *Admission*.

- (2) “Chief administrative officer” means the chancellor of an institution or the chancellor's designees.
~~(2) “Clear and convincing evidence” means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than “preponderance of the evidence.”~~

Note: Moved to s. UWS 1.021.

- ~~(2m) “Complainant” means any individual who is alleged to be the subject of sexual misconduct, as defined in s. UWS 17.151.~~

Note: Replaced by s. UWS 1.11.

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

Note: Moved to s. UWS 1.13.

- (3) “Days” means calendar days.

Note: Replaced by s. UWS 1.063(1).

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

~~(a) Given personally.~~

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

~~(c) Mailed by regular first class United States mail to the student's current address as maintained by the institution.~~Note: Replaced by s. UWS 1.029.

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

- (6) “Disciplinary probation” means a status in which a student may remain enrolled in the institution only upon the condition that the student complies with specified standards of conduct or

other requirements or restrictions on privileges, for a specified period of time, not to exceed two years.

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

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

Note: Replaced by s. UWS 1.16.

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

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

Note: Replaced by s. UWS 1.38.

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

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

Note: Moved to s. UWS 1.21.

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

Note: Replaced by s. UWS 1.06.

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

(12) “Nonacademic misconduct hearing committee” or “committee” means the committee appointed pursuant to s. UWS 17.07 to conduct hearings under s. UWS 17.12 or 17.153.

~~(12m) “Party” refers to a respondent or complainant involved in a disciplinary procedure under subch. III.~~

Note: Replaced by s. UWS 1.23.

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

Note: Replaced by s. UWS 1.067.

(13m) "Respondent," means, for non-Title IX misconduct, any student who ~~was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred and has been reported~~ is alleged to have violated s. UWS 17.09 ~~or 17.151~~ when that individual was a student.

(14) "Student" means any person who is registered for study in an institution ~~for the academic period in which the misconduct occurred, or between academic periods, for continuing students~~ has gained admission to that institution and has the right under institutional policies to register for classes without reapplying to that institution.

Note: Adapted from 34 C.F.R. s. 106.2 *Student*.

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

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

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

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; 2015 Wis. Act 330 s. 20: am. (17) Register April 2016 No. 724, eff. 5-1-16; CR 15-060: cr. (2m), (13m) Register June 2016 No. 726, eff. 7-1-16; correction in (2m), (13m) under 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 20-062: am. (1), (2m), cr. (2r), am. (7), cr. (7m), (8m), am. (9), cr. (9m), am. (10) to (12), cr. (12m), am. (13m), (15) Register May 2021 No. 785, eff. 6-1-21; correction in (8m), (12), (12m), (13m) made under s. 35.17, Stats., Register May 2021 No. 785; correction in (7m) made under s. 35.17, Stats., Register July 2021 No. 787.

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

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; 2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724, eff. 5-1-16.

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

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09.

UWS 17.05 Designation of investigating officer. The chief administrative officer of each institution shall designate an investigating officer or officers for allegations of student nonacademic misconduct. The investigating officer shall investigate student nonacademic misconduct and initiate procedures for nonacademic misconduct under s. UWS 17.11 or 17.152. For allegations involving sexual-Title IX misconduct, as defined in s. ~~UWS 17.15~~UWS 1.39, the Title IX Coordinator or designee shall serve as the investigating officer.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. Register May 2021 No. 785, eff. 6-1-21; correction made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 17.06 Nonacademic misconduct hearing examiner.

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

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

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 20-062: am. (2) Register May 2021 No. 785, eff. 6-1-21.

UWS 17.07 Nonacademic misconduct hearing committee.

- (1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the establishment of a student nonacademic misconduct hearing committee to fulfill the responsibilities of the nonacademic misconduct hearing committee in this chapter.
- (2) A student nonacademic misconduct hearing committee shall consist of at least three persons, including at least one student, except that no such committee shall be constituted with a majority of members who are students. The presiding officer, who may be the hearing examiner designated pursuant to s. UWS 17.06, shall be appointed by the chief administrative officer. The presiding officer and at least one other member shall constitute a quorum at any hearing held pursuant to due notice.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 20-062: am. (2) Register May 2021 No. 785, eff. 6-1-21.

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

- (1) MISCONDUCT ON UNIVERSITY LANDS. Except as provided in s. UWS 17.08 (2), the provisions contained in this chapter shall apply to the student conduct described in ss. UWS 17.09 UWS 1.39 and 17.09 and 17.151 that occurs on university lands or at university-sponsored events.
- (2) MISCONDUCT OUTSIDE OF UNIVERSITY LANDS. The provisions contained in this chapter may apply to the student conduct described in ss. UWS 17.09 UWS 1.39 and 17.09 and 17.151 that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer shall consider whether the conduct meets one or more of the following conditions:
 - (a) The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.
 - (b) The conduct indicates that the student presented or may present a danger or threat to the health or safety of the student or others.
 - (c) The conduct demonstrates a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 20-062: am. (1), (2) (intro.), (b) Register May 2021 No. 785, eff. 6-1-21.

UWS 17.081 Nonacademic misconduct occurring while a student is acting as a student employee. A student acting as a student-employee may still be subject to discipline for conduct described in ss. UWS 1.39 and 17.09 committed while the student is acting as a student employee.

Note: See 34 C.F.R. s. 106.46(b).

UWS 17.085 Disciplinary sanctions.

- (1) The disciplinary sanctions that may be imposed for nonacademic misconduct, in accordance with the procedures of ss. UWS 17.11 to 17.13, and 17.152 to 17.154, are any of the following:
 - (a) A written reprimand.
 - (b) Denial of specified university privileges.
 - (c) Payment of restitution.
 - (d) Educational or service sanctions, including community service.
 - (e) Disciplinary probation.
 - (f) Imposition of reasonable terms and conditions on continued student status.
 - (g) Removal from a course in progress.
 - (h) Enrollment restrictions on a course or program.

- (i) Suspension.
- (j) Expulsion.
- (2) One or more of the disciplinary sanctions listed in sub. (1) may be imposed for an incident of nonacademic misconduct.
- (3) Disciplinary sanctions shall not include the termination or revocation of student financial aid; however, this shall not be interpreted as precluding the individual operation of rules or standards governing eligibility for student financial aid under which the imposition of a disciplinary sanction could result in disqualification of a student for financial aid.

Note: See 34 C.F.R. s. 106.45(l)(2).

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 20-062: renum. from UWS 17.10 and am. (1) (intro.) Register May 2021 No. 785, eff. 6-1-21.

Subchapter II - Procedures for Student Nonacademic Discipline in ~~Nonsexual~~ Non-Title IX Misconduct Cases

UWS 17.09 Conduct subject to disciplinary action. In accordance with s. UWS 17.08, the ~~university~~ institution may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct. Conduct defined in s. UWS 17.09 shall use the disciplinary procedure, hearing, appeal, and settlement processes detailed in ss. UWS 17.11 to 17.15. However, at the ~~university~~ institution's discretion, conduct defined in s. UWS 17.09, when arising out of the same facts and circumstances as ~~sexual Title IX~~ misconduct defined in s. ~~UWS 17.151~~ UWS 1.39, may be consolidated with such charges and addressed with the disciplinary procedure, hearing, appeal, and ~~settlement informal resolution~~ processes detailed in ss. UWS 17.152 to 17.156.

Note: See 34 C.F.R. ss. 106.45(c)(2) & .46(c)(2).

- (1) DANGEROUS CONDUCT. Conduct that endangers or threatens the health or safety of oneself or another person.
- (4) HARASSMENT. Conduct defined in s. 947.013, Stats.
- (5) HAZING. Conduct defined in s. 948.51, Stats.
- (6) ILLEGAL USE, POSSESSION, MANUFACTURE, OR DISTRIBUTION OF ALCOHOL OR CONTROLLED SUBSTANCES. Use, possession, manufacture, or distribution of alcoholic beverages or of marijuana, narcotics, or other controlled substances, except as expressly permitted by law or university policy.
- (7) UNAUTHORIZED USE OF OR DAMAGE TO PROPERTY. Unauthorized possession of, use of, moving of, tampering with, damage to, or destruction of university property or the property of others.
- (8) DISRUPTION OF UNIVERSITY-AUTHORIZED ACTIVITIES. Conduct that obstructs or impairs university-run or university-authorized activities, or that interferes with or impedes the ability of a person to participate in university-run or university-authorized activities.
- (9) FORGERY OR FALSIFICATION. Unauthorized possession of or fraudulent creation, alteration, or misuse of any university or other governmental document, record, key, electronic device, or identification.
- (10) MISUSE OF COMPUTING RESOURCES. Conduct that involves any of the following:
 - (a) Failure to comply with laws, license agreements, and contracts governing ~~university~~ institution computer network, software, and hardware use.
 - (b) Use of ~~university~~ institution computing resources for unauthorized commercial purposes or personal gain.
 - (c) Failure to protect a personal password or ~~university~~ institution-authorized account.
 - (d) Breach of computer security, invasion of privacy, or unauthorized access to ~~university~~ institution computing resources.
- (11) FALSE STATEMENT OR REFUSAL TO COMPLY REGARDING AN ~~UNIVERSITY INSTITUTION~~ MATTER. Making a knowingly false oral or written statement to any ~~university~~ institution employee

or agent of the ~~university institution~~ regarding a ~~university institution~~ matter, or refusal to comply with a reasonable request on an ~~university institution~~ matter. The institution may not discipline a party, witness, or others participating in any institution procedure for disciplining Title IX misconduct for making a false statement based solely on the institution's determination whether Title IX misconduct occurred.

Note: See 34 C.F.R. s. 106.45(h)(5).

- (12) VIOLATION OF CRIMINAL LAW. Conduct that constitutes a criminal offense as defined by state or federal law.
- (13) SERIOUS AND REPEATED VIOLATIONS OF MUNICIPAL LAW. Serious and repeated off-campus violations of municipal law.
- (14) VIOLATION OF CH. UWS 18. Conduct that violates ch. UWS 18, including, but not limited to, provisions regulating fire safety, theft, and dangerous weapons.
- (15) VIOLATION OF UNIVERSITY RULES. Conduct that violates any published university rules, regulations, or policies, including provisions contained in university contracts with students.
- (16) NONCOMPLIANCE WITH DISCIPLINARY SANCTIONS. Conduct that violates a sanction, requirement, or restriction imposed in connection with previous disciplinary action.
- ~~(20) RETALIATION. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in ss. UWS 17.152 to 17.156, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under ss. UWS 17.152 to 17.156.~~

Note: Moved to s. UWS 1.41.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: cr. (17), (18), (19) Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. (intro.), r. (2), (3), (17) to (19), cr. (20) Register May 2021 No. 785, eff. 6-1-21; correction in (intro.) made under s. 35.17, Stats., Register July 2021 No. 787.

UWS 17.11 Disciplinary procedure.

- (1) PROCESS. The investigating officer may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.085 (1) for conduct defined in s. UWS 17.09.
- (2) CONFERENCE WITH RESPONDENT. When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly contact the respondent in person, by telephone, or by electronic mail-means to offer to discuss the matter, review the investigating officer's basis for believing that the respondent engaged in nonacademic misconduct, and to afford the respondent an opportunity to respond. If the respondent fails to respond to the investigating officer, the investigating officer may proceed to decide on the basis of the available information.
- (3) DETERMINATION BY THE INVESTIGATING OFFICER THAT NO DISCIPLINARY SANCTION IS WARRANTED. If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did not in fact occur, or that no disciplinary sanction is warranted under the circumstances, the matter shall be considered resolved without the necessity for further action. The investigating officer shall notify the respondent.
- (4) PROCESS FOLLOWING DETERMINATION BY THE INVESTIGATING OFFICER THAT NONACADEMIC MISCONDUCT OCCURRED.
 - (a) If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did occur and that one or more of the disciplinary sanctions listed under s. UWS 17.085 (1) should be recommended, the investigating officer shall prepare a written report which shall contain all of the following:
 - 1. A description of the alleged misconduct.

2. A description of all information available to the university institution regarding the alleged misconduct.
 3. Specification of the sanction sought.
 4. Notice of the respondent's right to a hearing.
 5. A copy of this chapter and of the institutional procedures adopted to implement this section.
- (b) The written report shall be delivered to the respondent.
- (c) A respondent who receives a written report under this section has the right to a hearing under s. [UWS 17.12](#) to contest the determination that nonacademic misconduct occurred, the choice of disciplinary sanctions, or both.
1. Where the disciplinary sanction sought is one of those listed in s. [UWS 17.085 \(1\) \(a\) to \(g\)](#), and if the respondent desires a hearing, the respondent shall file a written request with the student affairs officer within 10 days of the date the written report is delivered to the respondent. If the respondent does not request a hearing within this period, the determination of nonacademic misconduct shall be regarded as final, and the disciplinary sanction sought shall be imposed.
 2. Where the disciplinary sanction sought is one of those listed in s. [UWS 17.085 \(1\) \(h\) to \(j\)](#), the investigating officer shall forward a copy of the written report under par. (b) to the student affairs officer. The student affairs officer shall, upon receipt of the written report, proceed under s. [UWS 17.12](#) to schedule a hearing on the matter. A hearing shall be conducted unless the respondent waives, in writing, the right to such a hearing.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; correction to (1) (title) made under s. 13.92 (4) (b) 2., Stats., Register August 2009 No. 644; CR 15-060: am. (2), (3), (4) (a) 2., 4., (b), (c) Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. (1) to (3), (4) (a) (intro.), 2., (b), (c) 1., 2. Register May 2021 No. 785, eff. 6-1-21.

UWS 17.12 Hearing.

- (1) A respondent who requests a hearing, or for whom a hearing is scheduled under s. [UWS 17.11 \(4\) \(c\) 2.](#), for conduct defined in s. [UWS 17.09](#), shall have the right to decide whether the matter shall be heard by a hearing examiner or a hearing committee.
- (2) If a respondent requests a hearing under s. [UWS 17.11 \(4\) \(c\) 1.](#), or a hearing is required to be scheduled under s. [UWS 17.11 \(4\) \(c\) 2.](#), the student affairs officer shall take the necessary steps to convene the hearing and shall schedule it within 15 days of receipt of the request or written report. The hearing shall be conducted within 45 days of receipt of the request or written report, unless a different time period is mutually agreed upon by the respondent and investigating officer, or is ordered or permitted by the hearing examiner or committee.
- (3) No less than 5 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, a full explanation of the facts upon which the determination of misconduct was based, and shall provide the respondent with access to or copies of the investigating officer's explanation, together with any other materials provided to the hearing examiner or committee by the investigating officer, including any additional available information of the type described in s. [UWS 17.11 \(4\) \(a\) 2.](#)
- (4) The hearing shall be conducted in accordance with the following guidance and requirements:
 - (a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in ch. [UWS 17](#).
 - (b) The respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on the respondent's own behalf, and the right to be accompanied by an advisor of the respondent's choice. The advisor may be a

lawyer. In cases where the recommended disciplinary sanction is identified in s. UWS 17.085 (1) (a) to (h), the advisor may counsel the respondent but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the respondent except at the discretion of the hearing examiner or committee. In cases where the recommended disciplinary sanction is identified in s. UWS 17.085 (1) (i) or (j), or where the respondent has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on behalf of the respondent. In accordance with the educational purposes of the hearing, the respondent is expected to respond on the respondent's own behalf to questions asked of the respondent during the hearing.

- (c) The hearing examiner or committee:
 - 1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.
 - 2. Shall observe recognized legal privileges.
 - 3. May take reasonable steps to maintain order, and to adopt procedures for the questioning of a witness appropriate to the circumstances of that witness's testimony, provided, however, whatever procedure is adopted, the respondent is allowed to effectively question the witness.
- (d) The hearing examiner or committee shall make a record of the hearing. The record shall include a verbatim record of the testimony, which may be a sound recording, and a file of the exhibits offered at the hearing. The respondent may access the record, except as may be precluded by applicable state or federal law.
- (e) The hearing examiner or committee shall prepare written findings of fact and a written statement of its decision based upon the record of the hearing.
- (f) A hearing examiner's or committee's finding of nonacademic misconduct shall be based on one of the following:
 - 1. Clear and convincing evidence, when the sanction to be imposed is one of those listed in s. UWS 17.085 (1) (h) to (j).
 - 2. A preponderance of the evidence, when the sanction to be imposed is one of those listed in s. UWS 17.085 (1) (a) to (g).
- (g) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS 17.085 (1) (a) to (g) that differs from the recommendation of the investigating officer. Sanctions under s. UWS 17.085 (1) (h) to (j) may not be imposed unless previously recommended by the investigating officer.
- (h) The hearing shall be conducted by the hearing examiner or committee, and the university institution's case against the respondent shall be presented by the investigating officer or the investigating officer's designee.
- (i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered to the respondent, excluding information that may be precluded by state or federal law. The decision shall become final within 14 days of the date on the written decision unless an appeal is taken under s. UWS 17.13.
- (j) If the respondent fails to appear at a scheduled hearing and to proceed, the hearing examiner or committee may issue a decision based upon the information provided.
- (k) Disciplinary hearings are subject to s. 19.85, Stats., Wisconsin Open Meetings of Governmental Bodies, and may be closed if the respondent requests a closed hearing or if the hearing examiner or committee determines it is necessary to hold a closed hearing. Deliberations of the committee shall be held in closed session, in accordance with s. 19.85, Stats. As such, proper notice and other applicable rules shall be followed.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. (1), (2), (3), (4) (b), (c) 3., (d), (f) 3., (h), (i), (j), (k) Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. (1), (3), (4) (b), (c) 3., (d), (f) 1., 2., r. (4) (f) 3.,

am. (4) (g) to (k) Register May 2021 No. 785, eff. 6-1-21; correction in (k) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 17.13 Appeal to the chancellor.

- (1) For conduct defined in s. UWS 17.09, where the sanction prescribed by the hearing examiner or committee is one of those listed in s. UWS 17.085 (1) (h) to (j), the respondent may appeal in writing to the chief administrative officer within 14 days of the date of the written decision to review the decision of the hearing examiner or committee, based upon the record.
- (3) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:
 - (a) The information in the record does not support the findings or decision.
 - (b) Appropriate procedures were not followed which resulted in material prejudice to the respondent.
 - (c) The decision was based on factors proscribed by state or federal law.
- (4) If the chief administrative officer makes a finding under sub. (3), the chief administrative officer may return the matter for consideration, or may invoke an appropriate remedy of the chief administrative officer's own. The chief administrative officer's decision shall be communicated to the respondent.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: renum. (1) (intro.) to (1) and am., r. (1) (a), (b), (c), r. and recr. (2), cr. (3), (4) Register June 2016 No. 726, eff. 7-1-16; correction in (2) (a), (b) under ss. 13.92 (4) (b) 7. and 35.17, Stats., Register June 2016 No. 726; CR 20-062: am. (1), r. (2), am. (3) (b), (4) Register May 2021 No. 785, eff. 6-1-21.

UWS 17.14 Discretionary appeal to the Board of Regents. For conduct defined in s. UWS 17.09, institutional decisions under ss. UWS 17.11 to 17.13 shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by the respondent within 14 days of the final institutional decision.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; 2015 Wis. Act 330 s. 20: am. Register April 2016 No. 724, eff. 5-1-16; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. Register May 2021 No. 785, eff. 6-1-21.

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

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. Register May 2021 No. 785, eff. 6-1-21.

Subchapter III — Procedures for Student Nonacademic Discipline in Sexual Title IX Misconduct Cases

UWS 17.151 Sexual Title IX misconduct subject to disciplinary action under ss. UWS 17.152 to 17.156. In accordance with s. UWS 17.08, the ~~university institution~~ may discipline a student for engaging in, attempting to engage in, or assisting others to engage in ~~any of the following types of nonacademic misconduct~~ Title IX misconduct as defined by s. UWS 1.39. Sexual misconduct, as defined in this section, Title IX complaints against a student shall use be subject to the disciplinary procedure, hearing, appeal, and settlement-informal resolution processes detailed in ss. UWS 17.152 to 17.156.

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

- ~~(a) Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in an education program or activity of the university that when using the legal "reasonable person" standard, is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity.~~

~~(b) Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal “reasonable person” standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in a university sponsored or supported activity.~~

~~Note: Moved to s. UWS 1.18.~~

~~(2) SEXUAL ASSAULT. An offense that meets any of the following definitions:~~

~~Note: Moved to s. UWS 1.33.~~

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

~~Note: Moved to s. UWS 1.25.~~

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

~~Note: Moved to s. UWS 1.17.~~

~~(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.~~

~~Note: Moved to s. UWS 1.22.~~

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

~~Note: Moved to s. UWS 1.36.~~

~~(3) DATING VIOLENCE. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.~~

~~Note: Moved to s. UWS 1.14.~~

~~(4) DOMESTIC VIOLENCE. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a persons who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Wisconsin as per ss. 813.12 (1) (am) and 968.075, Stats.~~

~~Note: Moved to s. UWS 1.15.~~

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

~~Note: Moved to s. UWS 1.35.~~

~~(6) SEXUAL EXPLOITATION. Attempting, taking or threatening to take nonconsensual sexual advantage of another person. Examples include:~~

~~(a) Engaging in any of the following conduct without the knowledge and consent of all participants:~~

~~1. Observing, recording, or photographing private body parts or sexual activity of one or more complainants.~~

~~2. Allowing another person to observe, record, or photograph sexual activity or private body parts of one or more complainants.~~

~~3. Otherwise distributing recordings, photographs, or other images of the same of one or more complainants.~~

~~(b) Masturbating, touching one's genitals, or exposing one's genitals in complainant's presence without the consent of complainant, or inducing another person to do the same.~~

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

- ~~(d) Inducing incapacitation through deception for the purpose of making another person vulnerable to non-consensual sexual activity.~~
- ~~(e) Coercing the complainant to engage in sexual activity for money or anything of value.~~
- ~~(f) Threatening distribution of any of the following, to coerce the complainant into sexual activity or providing money or anything of value:~~
 - ~~1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more persons.~~
 - ~~2. Other information of a sexual nature, including sexual history or sexual orientation.~~

Note: Moved to s. UWS 1.34.

History: CR 20-062: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (title) made under s. 13.92 (4) (b) 2., Stats., and correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register May 2021 No. 785.

UWS 17.152 Sexual-Title IX misconduct disciplinary procedure.

- (1) **PROCESS.** The investigating officer may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.085 (1), for ~~sexual-Title IX~~ misconduct defined in s. ~~UWS 17.151~~UWS 1.39, and conduct described in s. UWS 17.09 may be consolidated with ~~sexual-Title IX~~ misconduct charges pursuant to this section and consistent with s. UWS 17.08. When responding to ~~sexual-Title IX~~ misconduct, the university institution may take the following actions:

Note: See 34 C.F.R. ss. 106.45(b)(8) & (c)(2) & .46(c)(2).

- (a) ~~The university institution~~ may consolidate disciplinary procedures as to allegations of ~~sexual Title IX~~ misconduct, as defined in s. ~~UWS 17.151~~UWS 1.39, against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of ~~sexual-Title IX~~ misconduct arise out of the same facts or circumstances.

Note: See 34 C.F.R. ss. 106.45(c)(2) & .46(c)(2).

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

- (2) **DISMISSAL OF A TITLE IX-MISCONDUCT COMPLAINT.** ~~Either a complainant or the Title IX Coordinator may file the formal Title IX complaint as defined in s. UWS 17.02 (8m). Unless a formal Title IX complaint is dismissed under par. (a) or (b), sexual misconduct under this section shall also be considered “Title IX misconduct” and require associated process. Dismissals will be handled as follows:~~

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

- ~~1. The alleged conduct is on the basis of sex and meets the definitions of sexual harassment, as defined in s. UWS 17.151 (1) (a), or sexual assault, dating violence, domestic violence, or stalking, as defined in s. UWS 17.151 (2) to (5).~~
- ~~2. The alleged conduct occurred within a university “education program or activity,” as defined in s. UWS 17.02 (7m).~~
- ~~3. The alleged conduct occurred against the complainant while in the United States.~~
- ~~4. The complainant is participating in or attempting to participate in the university's education program or activity at the time the complaint is filed.~~

- ~~(b) The university institution may dismiss a formal Title IX complaint if any of the following conditions are met at any time during the disciplinary procedure or hearing:~~

- ~~1. The institution is unable to identify the respondent after taking reasonable steps to do so. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal Title IX complaint or any allegations therein~~

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(i).

2. The respondent is not participating in the institution's education program or activity and is not employed by the institution. The respondent is no longer enrolled in the university

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(ii).

3. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under s. UWS 1.12, and the institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the Title IX complaint, if any, would not constitute Title IX misconduct even if proven. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal Title IX complaint or allegations therein. When dismissing a complaint alleging sex-based harassment involving a student party, an institution must obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations.

Note: Adapted from 34 C.F.R. ss. 106.45(d)(1)(iii) & .46(d)(2).

4. The institution determines the conduct alleged in the Title IX complaint, even if proven, would not constitute Title IX misconduct. Prior to dismissing the complaint under this paragraph, the institution must make reasonable efforts to clarify the allegations with the complainant.

Note: Adapted from 34 C.F.R. s. 106.45(d)(1)(iv).

- (c) Upon dismissal of a formal Title IX complaint, the university institution shall promptly and simultaneously send written notification all parties of the dismissal in writing, and including the reasons for the dismissal and any bases for appeal of the dismissal therefore simultaneously to the complainant and respondent. The complainant and respondent All parties have the right to appeal the dismissal of a formal Title IX complaint under s. UWS 17.154 (1).

Note: See 34 C.F.R. ss. 106.45(d)(2)-(3) & .46(d)(1).

- (d) Dismissal of a formal Title IX complaint does not preclude other university action under this chapter.

- (3) NOTICE OF INVESTIGATION. When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly distribute a written notice of investigation in person, by telephone or by electronic ~~mail~~ means, to ~~the complainant and respondent~~ all parties. The notice of investigation shall include all of the following information:

- (a) Information about the nonacademic misconduct process available under this chapter and about any available informal resolution process.

Note: See 34 C.F.R. s. 106.45(c)(1)(i).

- (ab) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute Title IX misconduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the institution. The details known at the time of issuing notice, including:

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

Note: Adapted from 34 C.F.R. s. 106.45(c)(1)(ii).

- (c) A statement that Title IX retaliation is prohibited.

Note: Adapted from 34 C.F.R. s. 106.45(c)(1)(iii).

~~(de)~~ Notice that the respondent is presumed not responsible for the alleged ~~sexual~~ Title IX misconduct until a determination is made pursuant to this subchapter and that prior to the determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker ~~regarding responsibility is made at the conclusion of the disciplinary procedure.~~

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(i).

~~(be)~~ Notice to ~~the complainant and respondent~~ all parties that they may have an advisor of their choice to serve in the role set out in this subchapter, and that advisor may be, but is not required to be, an attorney.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(ii).

~~(ef)~~ Notice to ~~the complainant and respondent~~ all parties that they ~~may have the right to~~ inspect and review the relevant and not otherwise impermissible evidence collected during the investigation.

Note: Adapted from 34 C.F.R. ss. 106.45(c)(1)(iv) & .46(c)(1)(iii).

~~(dg)~~ Notice that making a knowingly false statement or refusing to comply regarding an university institution matter may violate s. UWS 17.09 (11) and could result in additional sanctions.

Note: Adapted from 34 C.F.R. s. 106.46(c)(1)(iv).

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

~~(f)~~ Notice if the sexual misconduct disciplinary procedure also involves Title IX misconduct.

~~(g)~~ Information about the nonacademic misconduct process available under this chapter and about any available informal resolution process.

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

Note: See 34 C.F.R. ss. 106.45(c)(2) & .46(c)(2).

(3m) To the extent the institution has reasonable concerns for the safety of any person as a result of providing this notice, the institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Note: Adapted from 34 C.F.R. s. 106.46(c)(3).

(4) INVESTIGATION. The burden is on the institution—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. During the investigation, the investigating officer shall do all of the following:

Note: Adapted from 34 C.F.R. s. 106.45(f)(1).

(a) Provide an equal opportunity for ~~the~~ all parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Note: See 34 C.F.R. ss. 106.45(f)(2) & .46(e)(4) & (6).

(eb) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings or proceedings with sufficient time for the party to prepare to participate.

Note: Adapted from 34 C.F.R. s. 106.46(e)(1).

(bc) Prohibit redisclosing information a party would not have access to if they had not participated in procedures under this subchapter, unless it is for the following purposes: Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

1. To obtain and present evidence, including by speaking to witnesses, subject to s. UWS 1.41;
2. To consult with the individual's family members, confidential resources, or advisors;
3. To otherwise prepare for or participate in the procedures under this subchapter;
4. To provide the information to an officer, agent, or employee of the institution with a legitimate need to know the information; or
5. To make a disclosure required or expressly permitted by the operation of law.

Note: Adapted from 34 C.F.R. ss. 106.45(b)(5) & (f)(4)(iii).

- (ed)** Provide ~~the all~~ parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for ~~either the complainant or respondent~~ any party in any meeting or grievance proceeding; the ~~university~~ institution may, however, establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

Note: See 34 C.F.R. ss. 106.46(e)(2)-(3).

- (e)** Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is otherwise impermissible evidence regardless of relevance.

Note: Adapted from 34 C.F.R. s. 106.45(f)(3).

- (d)** ~~Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.~~

- (f)** Objectively evaluate all relevant and not otherwise impermissible evidence—including both inculpatory and exculpatory evidence—and not base credibility determinations on a person's status as complainant, respondent, or witness.

Note: Adapted from 34 C.F.R. s. 106.45(b)(6).

- (ge)** ~~As part of its investigation and disciplinary process, the institution may Nnot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; unless the university obtains that party's voluntary, written consent to do so for a grievance process under this section any impermissible evidence as defined by s. UWS 1.19, except as necessary to determine whether an exception in that definition applies.~~

Note: Adapted from 34 C.F.R. s. 106.45(b)(7).

- (5)** REVIEW OF EVIDENCE. Prior to completion of the final investigative report, as described in sub. (6), the ~~university~~ institution shall provide ~~the complainant and respondent~~ all parties and their advisors, if any:

- (a)** The relevant and not otherwise impermissible evidence gathered during the ~~university~~ institution's investigation ~~that is directly related to the allegations of sexual misconduct,~~ in an electronic format or hard copy, regardless of whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. This shall include information upon which the ~~university~~ institution does not intend to rely in reaching a determination regarding responsibility as well as any inculpatory or exculpatory evidence.

Note: See 34 C.F.R. s. 106.46(f)(4)(ii).

- (b)** At least 10 days to submit a written response to the evidence, which the investigator shall consider prior to completion of the final investigative report.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

- (6) FINAL INVESTIGATIVE REPORT. The investigator shall create an investigative report that fairly summarizes relevant and not impermissible evidence. The final investigative report may contain recommended determinations as to whether sexual-Title IX misconduct occurred and specification of any sanction recommended. The final investigative report shall be delivered simultaneously to the respondent and complainant all parties and their advisors, if any, for their review and response at least 10 days prior to a hearing. Upon distribution of the final investigative report to ~~the complainant and respondent all parties~~, the following conditions shall apply:

- (a) ~~The complainant and respondent all parties~~ have the right to a hearing under s. UWS 17.153 for a ~~formal~~ determination as to whether sexual-Title IX misconduct occurred, potential disciplinary sanctions, or both.
- (b) The university institution shall proceed under s. UWS 17.153 to schedule a hearing on the matter. A hearing shall be conducted unless ~~the complainant and respondent all parties~~ waive, in writing, the right to such a hearing or otherwise voluntarily choose to proceed with a settlement agreement or informal resolution under s. UWS 17.156. If all parties waive their right to a hearing, the hearing examiner or hearing committee shall prepare a decision based on the record.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

(7) PRESUMPTIONS & BIAS

- (a) The respondent is presumed not responsible for the alleged Title IX misconduct until a determination is made pursuant to this subchapter and that prior to the determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.

Note: See 34 C.F.R. ss. 106.45(b)(3) & .46(c)(1)(i).

- (b) No person designated as a Title IX Coordinator or as an investigator, decision maker, hearing committee member, or hearing examiner for any Title IX complaint may have a conflict of interest or bias for or against complainants or respondents generally or an individual party. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

Note: Adapted from 34 C.F.R. s. 106.45(b)(2).

History: CR 20-062: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (2) (intro.) made under s. 35.17, Stats., and correction in (1) (intro.), (2) (c), (6) (a), (b) made under s. 13.92, (4) (b) 7., Stats., Register May 2021 No. 785; correction in (2) (a) 1. made under s. 35.17, Stats., Register July 2021 No. 787.

UWS 17.153 Sexual-Title IX misconduct hearing.

- (1) The university institution shall have the right to decide whether a hearing examiner or hearing committee shall hear the matter.
- (2) The university institution shall take the necessary steps to convene the hearing and shall schedule it within 15 days of the distribution of the final investigative report. The hearing shall be conducted within 45 days of the distribution of the final investigative report, unless a different time period is mutually agreed upon by the complainant, respondent and university or is ordered or permitted by the hearing examiner or committee. The institution may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay.

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

- (3) No less than 10 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, the final investigative report and any additional available information of the type described in s. UWS 17.152 (4).

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

- (4) The hearing shall be conducted in accordance with all of the following guidance and requirements:
- (a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in this chapter.

- (b) ~~Both the complainant and respondent~~ All parties shall have the following rights, subject to the express limitations in this section:
1. The right to question adverse witnesses through their advisor, hearing committee or hearing examiner;
 2. ~~¶~~ The right to present information and witnesses;
 3. ~~¶~~ The right to be heard on their own behalf; and
 4. ~~¶~~ The right to be accompanied by an advisor of their choice. The advisor may be a lawyer. In accordance with the educational purposes of the hearing, ~~the complainant and respondent~~ all parties are expected to respond on their own behalf to questions asked of them during the hearing.
- (c) The hearing examiner or hearing committee:
1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, ~~or~~ unduly repetitious testimony and shall exclude otherwise impermissible testimony.
 2. May not permit questions and evidence about any subject matter proscribed by s. UWS 17.152(4)(g). ~~the complainant's sexual predisposition or prior sexual behavior unless:~~
 - ~~a. Such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or~~
 - ~~b. The questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.~~
 3. Shall observe recognized legal privileges including those described in s. ~~UWS 17.152 (4)(c)~~ UWS 1.19 (1).
Note: Adapted from 34 C.F.R. s. 106.46(b)(7)(i).
 4. May take reasonable steps to maintain order and adopt procedures for the questioning of parties or witnesses appropriate to the circumstances of the testimony, ~~provided the advisors for the complainant and respondent are allowed to effectively cross-examine any party or witness.~~
 5. Only relevant and not otherwise impermissible, unclear, or harassing questions may be asked of any party or witness.
Note: Adapted from 34 C.F.R. s. 106.46(f)(3).
- (5) The party's advisors, hearing examiner, or hearing committee shall conduct cross examination directly, orally, and in real ~~time by the party's advisor~~. A party may not personally conduct cross examination. The following conditions shall apply:
- (a) In cases of sex-based harassment involving a student party, if a party does not have an advisor at the hearing to conduct cross-examination, the university institution shall provide someone, without fee or charge, who may or may not be an attorney, to conduct cross-examination. In all other cases of Title IX misconduct, if a party does not have an advisor, the hearing committee or hearing examiner shall conduct questioning in the manner provided in this subsection.
Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii).
 - (b) Before a party or witness answers a cross-examination or other question, the hearing examiner or committee shall first determine whether a question is relevant, otherwise impermissible, unclear, or harassing or not and explain any decision to exclude those questions as not relevant, otherwise impermissible, unclear, or harassing. The hearing committee or hearing examiner must give a party, or their advisor, if any, an opportunity to clarify or revise a question that the hearing committee or hearing examiner has determined is unclear or

harassing. If a question or revised question is relevant and not otherwise impermissible, unclear, or harassing the question must be asked.

Note: Adapted from 34 C.F.R. s. 106.46(f)(3).

(c) The hearing examiner or committee may not draw an inference regarding responsibility based solely on a party's or a witness's absence from the hearing or refusal to answer cross-examination questions.

(d) The hearing examiner or hearing committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing committee or hearing examiner must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions. At hearings involving Title IX misconduct, if a party or a witness does not submit to cross-examination at the hearing, then the hearing examiner or committee may not rely on any statement of that party or witness made prior to or during the hearing in reaching a determination regarding responsibility.

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii) & (4).

(e) If a party or witness provides good cause not to be questioned by an advisor and agrees to submit to questioning by the hearing committee or hearing examiner and the hearing committee or hearing examiner finds that such good cause exists, the hearing committee or hearing examiner shall ask all relevant and not otherwise impermissible, unclear, or harassing questions, including those challenging credibility, submitted by a party or their advisor.

Note: See 34 C.F.R. ss. 106.46(e)(2) & (f)(1)(ii).

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

(6m) Upon the request of any party, the institution must conduct the live hearing with the parties physically present in separate locations, with technology enabling the hearing committee or hearing examiner to simultaneously see and hear the party or the witness while that person is speaking.

Note: Adapted from 34 C.F.R. s. 106.46(g).

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

Note: See 34 C.F.R. s. 106.46(g).

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

Note: See 34 C.F.R. s. 106.45(h)(1) & .46(h).

(a) ~~Identification~~ A description of the alleged ations potentially constituting sexual-Title IX misconduct.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(i).

(b) A description of the procedural steps taken from the receipt of the ~~initial~~ Title IX complaint through the determination, including any notifications to the ~~complainant and respondent parties~~, interviews with the ~~complainant and respondent parties~~ and witnesses, site visits, methods used to gather other evidence, and hearings held.

(bm) Information about the policies and procedures that the institution used to evaluate the allegations.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(ii).

(c) Findings of fact supporting the determination.

(d) Conclusions regarding the application of this chapter to the facts.

(dm) An evaluation of the relevant and not otherwise impermissible evidence and determination whether Title IX misconduct occurred.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(iii).

(e) When the decisionmaker finds that Title IX misconduct occurred, any disciplinary sanctions the institution will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the institution to the complainant, and, to the extent appropriate, other students identified by the institution to be experiencing the effects of the Title IX misconduct. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility under this subchapter, including any Title IX misconduct, any disciplinary sanctions the university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the university's education program or activity shall be provided by the university to the complainant.

Note: Adapted from 34 C.F.R. s. 106.46(h)(1)(iv).

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

(g) Procedures and permissible bases for ~~the complainant and respondent~~ any party to appeal.

Note: See 34 C.F.R. s. 106.46(h)(1)(v).

(9) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered simultaneously to ~~the respondent and the complainant~~ all parties, excluding information that may be precluded by state or federal law. If an appeal is filed, the decision regarding responsibility becomes final on the date the ~~university institution~~ institution provides ~~the complainant and respondent~~ all parties with the written determination of the result of the appeal. If no appeal is filed, the decision regarding responsibility becomes final once the last date to appeal passes.

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

History: CR 20-062: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (4) (a) made under s. 35.17, Stats., Register May 2021 No. 785.

UWS 17.154 Appeal to the chancellor for ~~sexual~~ Title IX misconduct.

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

(a) A dismissal of a ~~formal~~ Title IX complaint.

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

(1m) If a dismissal of a Title IX complaint is appealed, the institution must notify the parties of any appeal, including notice of the allegations consistent with s. UWS 17.152(3) if notice was not previously provided to the respondent.

Note: See 34 C.F.R. s. 106.45(d)(3)(i).

(2) The chief administrative officer has 30 days from receipt of an appeal to respond in writing simultaneously to ~~both the complainant and respondent~~ all parties. The institution may extend that timeline as necessary for good cause and with simultaneous notice to the parties that includes the reason for the delay. ~~and~~ The chief administrative officer shall sustain the decision unless the chief administrative officer finds any of the following:

Note: See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).

- (a) The information in the record does not support the findings or decision.
Note: See 34 C.F.R. s. 106.46(i)(2).
 - (b) A procedural irregularity ~~affected~~ would change the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(i).
 - (c) The decision was based on factors proscribed by state or federal law.
Note: See 34 C.F.R. s. 106.46(i)(2).
 - (d) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that ~~could~~ would affect ~~change~~ the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(ii).
 - (e) The Title IX Coordinator, investigator, hearing examiner, or a member of the hearing committee had a conflict of interest or bias for or against complainants or respondents generally or ~~the an~~ individual ~~complainant or respondent party~~ that ~~affected~~ would change the outcome of the matter.
Note: Adapted from 34 C.F.R. s. 106.46(i)(1)(iii).
- (3) If the chief administrative officer makes a finding under sub. (2), the chief administrative officer may return the matter for consideration, or may invoke an appropriate remedy of their own. The chief administrative officer's written decision describing the result of the appeal and the rationale for the result shall be communicated simultaneously to ~~the respondent and complainant~~ all parties.
- (4) When an appeal is filed, the chief administrative officer shall notify the other party in writing and give ~~both the complainant and respondent~~ all parties a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

Note: See 34 C.F.R. s. 106.45(d)(3).

History: CR 20-062: cr. Register May 2021 No. 785, eff. 6-1-21.

UWS 17.155 Discretionary appeal to the Board of Regents for ~~sexual~~ Title IX misconduct. ~~University~~ The decisions of the chief administrative officer under ss. UWS 17.152 to 17.154 shall be final, except that, in cases where their institution or any party is seeking suspension or expulsion under s. UWS 17.085(1)(i) or (j), the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by any party within 14 days of the final ~~university~~ decision of the institution. In such cases, if no appeal is submitted within the timeframe specified, the decision of the chief administrative officer shall be final. If the board of regents grants a review upon the record, it shall:

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

History: CR 20-062: cr. Register May 2021 No. 785, eff. 6-1-21; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register May 2021 No. 785.

UWS 17.156 ~~Settlement~~ Informal Resolution for ~~sexual~~ Title IX misconduct.

Note: See 34 C.F.R. s. 106.44(k).

- (1) The procedures set forth in this chapter allow the ~~university~~ institution, the respondent, and the complainant to voluntarily enter into a settlement agreement or informal resolution regarding the alleged misconduct, any time after the notice of investigation has been distributed to ~~the complainant and respondent~~ all parties and prior to any final determination regarding responsibility. Any such agreement and its terms shall be in writing and signed by the complainant, respondent, and the Title IX Coordinator or designee. ~~except in any of the following circumstances:~~ The institution may not enter into a settlement agreement or informal resolution if the Title IX complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or such a process would conflict with Federal, State or local law.

- ~~(a) There is no identified complainant.~~
- ~~(b) The complainant has chosen not to participate in proceedings pursuant to this subchapter.~~
- ~~(c) Title IX misconduct is involved, and the complainant has withdrawn the formal Title IX complaint.~~
- (2) In the circumstances described in sub. (1), the agreement and its terms may be signed by only the respondent and the Title IX Coordinator or designee. The case is concluded when a copy of the signed agreement is delivered to the complainant, if any, and respondent all parties. At any time prior to agreeing to a resolution, either party has the right to withdraw from the settlement informal resolution process and resume the process under ss. UWS 17.152 to 17.155. The institution must not require or pressure the parties to participate in an informal resolution process. The institution must obtain the parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and determination of a Title IX complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.
- (3) Before initiation of an informal resolution process, the institution must provide to the parties notice that explains:
 - (a) The allegations;
 - (b) The requirements of the informal resolution process;
 - (c) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the institution's grievance procedures;
 - (d) That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
 - (e) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
 - (f) What information the institution will maintain and whether and how the institution could disclose such information for use the procedures in this subchapter, if such procedures are initiated or resumed.
- (4) The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker in the institution's grievance procedures. Any person designated by an institution to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual party. Any person facilitating informal resolution must receive training required by policy.
- (5) Potential terms that may be included in an informal resolution agreement include but are not limited to:
 - (a) Restrictions on contact; and
 - (b) Restrictions on the respondent's participation in one or more of the institution's programs or activities or attendance at specific events, including restrictions the institution could have imposed as remedies or disciplinary sanctions had the institution determined at the conclusion of the institution's grievance procedures that sex discrimination occurred.

History: CR 20-062: cr. Register May 2021 No. 785, eff. 6-1-21.

Subchapter IV — Effect of Discipline, Petitions for Restoration, and Emergency Suspension

UWS 17.16 Effect of discipline within the institution. A respondent who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS 17.085 (1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11 or 17.152, shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. Register May 2021 No. 785, eff. 6-1-21.

UWS 17.17 Effect of suspension or expulsion within the university system.

- (1) Suspension or expulsion shall be systemwide in effect and shall be noted on an individual's transcript, with suspension noted only for the duration of the suspension period.
- (2) An individual who is suspended from one institution in the University of Wisconsin System may not enroll in another institution in the system until the suspension has expired by its own terms, except as provided in s. UWS 17.18.
- (3) An individual who is expelled from one institution in the University of Wisconsin System may not enroll in another institution in the system, except as provided in s. UWS 17.18.
- (4) An individual who is in a state of suspension or expulsion from the university institution under this chapter, or who leaves or withdraws from the university institution while under nonacademic misconduct charges under this chapter, may not be present on any campus without the written consent of the chief administrative officer of that campus.
- (5) Upon completion of a suspension period, an individual who is academically eligible may re-enroll in the institution which suspended the individual, provided all conditions from previous disciplinary sanctions have been met.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. (2), (3), (4), (5) Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. (5) Register May 2021 No. 785, eff. 6-1-21.

UWS 17.18 Petition for restoration of rights after suspension or expulsion. A respondent who has been suspended may petition to have their student status, rights, and privileges restored before the suspension has expired by its own terms under s. UWS 17.17 (2). A respondent who has been expelled may petition for the right to apply for readmission. The petition shall be in writing and directed to the chief administrative officer of the institution from which the respondent was suspended or expelled or from a different University of Wisconsin institution to which the respondent seeks admission. The chief administrative officer shall make the readmission decision. In cases of ~~sexual~~-Title IX misconduct, the readmission decision shall be made in consultation with the Title IX Coordinator and reasonable attempts shall be made to notify the complainant of any change to the disciplinary outcome. If enrolled as a student at the time of the petition, the complainant shall be provided opportunity to respond to the petition prior to the readmission decision.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. Register June 2016 No. 726, eff. 7-1-16; CR 20-062: am. Register May 2021 No. 785, eff. 6-1-21; **correction made under s. 35.17, Stats., Register September 2021 No. 789.**

UWS 17.19 Emergency suspension.

- (1) The chief administrative officer may impose an emergency suspension on a respondent, pending final institutional action on a report of nonacademic misconduct, in accordance with the procedures of this section.
- (2) The chief administrative officer of each institution may impose an emergency suspension on a respondent when all of the following conditions are met:
 - (a) The investigating officer has made a reasonable attempt to offer the respondent the opportunity for discussion, either in person or by telephone or video conference.
 - (b) The investigating officer recommends a sanction of suspension or expulsion.
 - (c) The chief administrative officer concludes, based on the available information, that the misconduct occurred and that the respondent's continued presence on campus meets one or more of the following conditions:
 1. Would constitute a potential for serious harm to the respondent.
 2. Would constitute a potential for serious harm to others.

3. Would pose a threat of serious disruption of university-run or university-authorized activities.
 4. Would constitute a potential for serious damage to university facilities or property.
- (d) In cases of ~~sexual~~ Title IX misconduct as defined in s. ~~UWS 17.151~~ UWS 1.39, the chief administrative officer makes reasonable attempts to consult with the complainant and offer protective measures.
- (3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the respondent. In cases of ~~sexual~~ Title IX misconduct, as defined in s. ~~UWS 17.151~~ UWS 1.39, the written notification of the emergency suspension shall be delivered simultaneously to ~~the complainant and the respondent~~ all parties. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the respondent and is final.
 - (4) Where an emergency suspension is imposed, the hearing on the underlying allegations of misconduct shall be held, either on or outside of university lands, within 21 days of the imposition of the emergency suspension, unless the respondent agrees to a later date.
 - (5) An emergency suspension imposed in accordance with this section shall be in effect until the decision in the hearing on the underlying charges pursuant to s. UWS 17.12 or 17.153 is rendered or the chief administrative officer rescinds the emergency suspension. In no case shall an emergency suspension remain in effect for longer than 30 days, unless the respondent agrees to a longer period.
 - (6) If the chief administrative officer determines that none of the conditions specified in sub. (2) (c) are present, but that misconduct may have occurred, the case shall proceed in accordance with s. UWS 17.12 or 17.153, as applicable.

History: CR 08-099: cr. Register August 2009 No. 644, eff. 9-1-09; CR 15-060: am. (1), (2) (intro.), (a), (c) (intro.), 1., (3), (4), (5) Register June 2016 No. 726, eff. 7-1-16; CR 20-062: cr. (2) (d), am. (3), (5), (6) Register May 2021 No. 785, eff. 6-1-21; correction in (6) made under s. 35.17, Stats., Register May 2021 No. 785.

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On August 1, 2024, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s.227.14(1), Wis. Stats.

Analysis

The proposed rule affects Chapter UWS 1, relating to definitions for UWS chs 1 to 6.

Statement of Scope

The scope statement for this rule, [SS 059-24](#), was approved by the Governor on May 23, 2024, published in Register [821B](#) on May 28, 2024, and approved by Board of Regents of the University of Wisconsin System on June 26, 2024.

Agency Procedure for Promulgation

A public hearing is required and will be held before October 30, 2024. The exact date is still being determined.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

The Board of Regents of the University of Wisconsin System.

Agency Contact Person

Dany Thompson, UW System Title IX and Clery Administrator, 1220 Linden Drive, Van Hise Hall, Room 1848, Madison, WI; dany.thompson@wisconsin.edu

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On August 1, 2024, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s.227.14(1), Wis. Stats.

Analysis

The proposed rule affects Chapter UWS 4, relating to relating to faculty dismissal procedures.

Statement of Scope

The scope statement for this rule, [SS 060-24](#), was approved by the Governor on May 23, 2024, published in Register [821B](#) on May 28, 2024, and approved by Board of Regents of the University of Wisconsin System on June 26, 2024.

Agency Procedure for Promulgation

A public hearing is required and will be held before October 30, 2024. The exact date is still being determined.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

The Board of Regents of the University of Wisconsin System.

Agency Contact Person

Dany Thompson, UW System Title IX and Clery Administrator, 1220 Linden Drive, Van Hise Hall, Room 1848, Madison, WI; dany.thompson@wisconsin.edu

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On August 1, 2024, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s.227.14(1), Wis. Stats.

Analysis

The proposed rule affects Chapter UWS 7, relating to faculty dismissal procedures in special cases.

Statement of Scope

The scope statement for this rule, [SS 061-24](#), was approved by the Governor on May 23, 2024, published in Register [821B](#) on May 28, 2024, and approved by Board of Regents of the University of Wisconsin System on June 26, 2024.

Agency Procedure for Promulgation

A public hearing is required and will be held before October 30, 2024. The exact date is still being determined.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

The Board of Regents of the University of Wisconsin System.

Agency Contact Person

Dany Thompson, UW System Title IX and Clery Administrator, 1220 Linden Drive, Van Hise Hall, Room 1848, Madison, WI; dany.thompson@wisconsin.edu

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On August 1, 2024, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s.227.14(1), Wis. Stats.

Analysis

The proposed rule affects Chapter UWS 11, relating to academic staff dismissal procedures for cause.

Statement of Scope

The scope statement for this rule, [SS 062-24](#), was approved by the Governor on May 23, 2024, published in Register [821B](#) on May 28, 2024, and approved by Board of Regents of the University of Wisconsin System on June 26, 2024.

Agency Procedure for Promulgation

A public hearing is required and will be held before October 30, 2024. The exact date is still being determined.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

The Board of Regents of the University of Wisconsin System.

Agency Contact Person

Dany Thompson, UW System Title IX and Clery Administrator, 1220 Linden Drive, Van Hise Hall, Room 1848, Madison, WI; dany.thompson@wisconsin.edu

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On August 1, 2024, the Board of Regents of the University of Wisconsin System submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s.227.14(1), Wis. Stats.

Analysis

The proposed rule affects Chapter UWS 17, relating to student discipline procedures for nonacademic conduct.

Statement of Scope

The scope statement for this rule, [SS 063-24](#), was approved by the Governor on May 23, 2024, published in Register [821B](#) on May 28, 2024, and approved by Board of Regents of the University of Wisconsin System on June 26, 2024.

Agency Procedure for Promulgation

A public hearing is required and will be held before October 30, 2024. The exact date is still being determined.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

The Board of Regents of the University of Wisconsin System.

Agency Contact Person

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Regent Policy Document 14-2 (formerly 81-2)

~~Sexual Violence and Sexual Harassment~~ Sex Discrimination, Sex-Based Harassment, and Other Title IX Misconduct

Scope

This policy applies to all University of Wisconsin System institutions and programs. This policy covers ~~sex discrimination-sexual harassment and sexual violence~~, including, but not limited to, ~~sexual-sex-based~~ harassment, sexual assault, stalking, dating violence, domestic violence, and sexual exploitation, and other Title IX misconduct as defined in Appendix B below.

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~~ from Title IX misconduct.

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~~ of Title IX misconduct. 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~~ Title IX misconduct. In addition, this policy directs institutions to identify factors that may contribute to a culture in which incidents of ~~sexual violence and sexual harassment~~ Title IX misconduct can exist, and to address these issues to advance a safe environment that supports healthy and respectful interactions and relationships.

University of Wisconsin institutions and programs do not discriminate on the basis of sex and prohibit sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

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~~ Title IX misconduct.

Regent Policy Documents 14-6 and 14-10 cover discrimination on the basis of other protected categories and shall be interpreted consistently with this policy.

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~~ Title IX Misconduct policy that is widely available and disseminated to all students and employees. **Appendix A** provides a compliant 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~~ Title IX misconduct complainants, respondents, and witnesses from receiving citations or being subjected to the student disciplinary process for underage consumption of alcohol or other drugs 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~~ Title IX misconduct. 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~~ Title IX misconduct.
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 Title IX misconduct.~~ 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.~~10. Policy Statement. A statement expressing the institution's commitment to promoting an environment free from incidents of ~~sexual violence and sexual harassment Title IX misconduct.~~
- ~~12.~~11. Procedures. Reference to, or inclusion of, institutional policies governing procedures for reporting allegations of ~~sexual violence and sexual harassment Title IX misconduct,~~ including information for reporting to campus and local police as well as for filing a formal Title IX complaint.
- ~~13.~~12. Prohibition against Retaliation. A statement explicitly prohibiting Title IX retaliation as defined in Appendix B.
- ~~14.~~13. Prompt Resolution. Inclusion of language that reflects the institution's efforts to pursue the prompt resolution of reports of ~~sexual violence and sexual harassment Title IX misconduct.~~
- ~~15.~~14. 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 Title IX misconduct,~~ and states how such actions support the System and institutional missions.
- ~~16.~~15. Recordkeeping. A description of how records of reports of ~~sexual violence and sexual harassment Title IX misconduct~~ will be maintained.
- ~~17.~~16. 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 Title IX misconduct,~~ 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.~~17. Resources. A description of counseling, medical, legal, and other resources for complainants and respondents.

~~19.18.~~ 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. If a University of Wisconsin institution wishes to take advantage of annual training provided by the Universities of Wisconsin administration, it must designate as a responsible employee any employee who is not a confidential employee.~~

~~20.19.~~ 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~~ Title IX misconduct.

~~21.20.~~ Sanctions. Identification of potential sanctions for students and employees who are found responsible under the policy.

~~22.21.~~ Scope Statement. Provision of a scope statement covering all institutional students and employees in university sponsored and supported activities.

~~23.22.~~ 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.

~~24.23.~~ 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~~ Title IX Misconduct policy, perform assessment, and address campus climate and culture issues.

~~25.24.~~ 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 Barriers to Access Based on Gender Sex”~~
- RPD 14-6, “Discrimination, Harassment, and Retaliation”
- 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
- Subchapter II of ch. UWS 1, Wis. Admin. Code.
- Subchapter III of ch. UWS 4, Wis. Admin. Code.

- [Subchapter III of ch. UWS 11, Wis. Admin. Code.](#)
- [Subchapter III of ch. UWS 17, Wis. Admin. Code.](#)

(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, and Res. 11494, adopted 08/20/2020, amended Regent Policy Document 14-2. Res. 11637, adopted 06/04/2021, amended Regent Policy Document 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-[institution] 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-[institution] is committed to creating and maintaining a community environment that is free from ~~sexual violence and sexual harassment Title IX misconduct.~~

PURPOSE AND SCOPE OF POLICY

This policy prohibits acts of ~~sexual violence and sexual harassment Title IX misconduct on university property, at university-sanctioned or university-affiliated events, and where off-campus conduct affects a member of the university community in the operations of the institution which include, but is not limited to, conduct that is subject to the institution's disciplinary authority, over which the institution exercises substantial control, or that occurs in a building owned or controlled by a student organization that is officially recognized by an institution.~~ 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-[institution] community with information and resources to identify, report, and respond to ~~sexual violence and sexual harassment Title IX misconduct~~ including sexual assault, sexual exploitation, stalking, and dating and domestic violence. These efforts support the overall missions of UW-[Institution] 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-[Institution] Title IX Coordinator are described in the institutional position description. Those duties include:

- receiving reports of ~~sexual violence and sexual harassment~~ [Title IX misconduct](#)
- 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~~ [Title IX misconduct](#), as appropriate
- coordinating the effective implementation of supportive measures, [and remedies, including in cases of dismissal or informal resolution.](#)
- 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-[Institution] 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-[Institution] 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~~ Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute Title IX misconduct.
4. Be familiar with resources on campus to which to refer a reporting individual.

~~D. Official with Authority~~

~~UW-[Institution] 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.~~

~~DE. All Employees~~

Regardless of whether they are or are not 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].

III. Reporting an Incident of [Sexual Violence or Sexual Harassment Title IX Misconduct](#)

A. Reporting Options

Those who have been subjected to an incident of [sexual violence or sexual harassment Title IX misconduct](#) 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 institution's](#) 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.

[For complaints that the institution's policies, programs, or practices discriminate on the basis of sex, the procedures found in Appendix E apply.](#)

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 Title IX misconduct](#) generally will not be issued citations by campus law enforcement or subject to disciplinary sanctions for alcohol [or other drug](#) 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 Title IX misconduct](#) 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 [& Remedies](#)

The university offers a variety of resources that are available to individuals involved in incidents of [sexual violence or sexual harassment Title IX misconduct](#), including the following: *[List of resources [& remedies](#) including medical, advocacy, counseling, tutoring.]*

3. Appeal of Supportive Measures, Resources, or Remedies

[The university will provide a process for appealing supportive measures, resources, or remedies that complies with the requirements of 34. C.F.R. Part 106.](#)

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 Title IX misconduct](#), 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 Title IX misconduct](#), the procedures linked here apply. *[Link to Chapters UWS 4, 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 Title IX misconduct](#), 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 Title IX misconduct](#), 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 Title IX misconduct~~, the procedures linked here apply. *[Link to Appendix C].*

2. Title IX Misconduct Informal Resolution Procedures [If offered by the institution]

~~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:~~

~~1.—~~

~~1.—~~

~~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.~~

In lieu of resolving a complaint through University's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. University will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any. University will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, University will explain in writing to the parties:

- [The allegations;](#)
- [The requirements of the informal resolution process;](#)
- [That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;](#)
- [That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;](#)
- [The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and](#)
- [What information University will maintain and whether and how University could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.](#)

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~~ [Title IX misconduct](#), 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~~ [Title IX misconduct](#), 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~~ [Title IX misconduct](#) 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, ~~not including a hearing~~, 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 [Title IX](#) 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~~ has the meaning given 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~~ [Title IX misconduct](#) 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. [\[See 34 C.F.R. § 106.45\(h\)\(5\).\]](#)

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~~ [Title IX misconduct](#). All employees must receive this training on an annual basis, as well as any advisors, graduate students, volunteers, or third-party agents who are **directly** involved in carrying out the university's Title IX duties. [See pages 276-277 of the Unofficial Rule.]

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~~ [Title IX misconduct](#), 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 Title IX misconduct](#) consistent with the institutional records-retention policy, which must be at least seven (7) years, [except as otherwise provided in 34 C.F.R. Part 106](#). 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-[Institution] 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.~~

Appendix B: Definitions to be Included in Institutional Policies

Admission. Selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by an institution. [See § UWS 17.02(1), Wis. Admin. Code & 34 C.F.R. § 106.2 Admission.]

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.

Chancellor. Chancellor includes, for Title IX misconduct cases against employees of Universities of Wisconsin administration only, the President of the University of Wisconsin System. [See § 11.015(1), Wis. Admin. Code.]

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.” [See § UWS 1.021, Wis. Admin. Code.]

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. Any of the following:~~

~~(1)–~~

(1) A student or employee who is alleged to have been subjected to conduct that could constitute Title IX misconduct; or

(2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute Title IX misconduct and who was participating or attempting to participate in the university's education program or activity at the time of the alleged sex discrimination.

[See § UWS 1.11, Wis. Admin. Code & 34 C.F.R. § 106.2 Complainant.]

Complaint by a Title IX Coordinator. A Title IX complaint initiated by a Title IX Coordinator alleging Title IX misconduct in the absence of a Title IX complaint or after the withdrawal of any or all of the allegations in a Title IX complaint and in the absence or termination of an informal resolution process.

(1) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

(a) The complainant's request not to proceed with initiation of a Title IX complaint;

- (b) The complainant's reasonable safety concerns regarding initiation of a Title IX complaint;
- (c) The risk that additional acts of sex discrimination would occur if a Title IX complaint is not initiated;
- (d) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (e) The age and relationship of the parties, including whether the respondent is an employee of the university;
- (f) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- (g) (g) The availability of evidence to assist a decisionmaker in determining whether Title IX misconduct occurred; and
- (h) (h) Whether the university could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under chs. UWS 4, 11, or 17, or in university policy.

(2) If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the recipient institution from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

[See § UWS 1.12, Wis. Admin. Code & 34 C.F.R. § 106.44(f)(1)(v).]

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. Any of the following:

- (1) An employee of an recipient institution whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
- (2) An employee of an recipient institution whom the recipient institution has designated as confidential under this part for the purpose of providing services to persons related to

sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

- (3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is only with respect to information received while conducting the study.

[See 34 C.F.R. § 106.2 Confidential employee.]

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:

- (1) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (a) the length of the relationship,
 - (b) the type of relationship, and
 - (a)(c) the frequency of interaction between the persons involved in the relationship.

[See § UWS 1.14., Wis. Admin. Code & 34 C.F.R. § 106.2 Sex-based harassment (3)(ii).]

Domestic Violence. Felony or misdemeanor crimes of violence committed by a person who:

- (1) is a current or former spouse or intimate partner of the complainant; under the domestic or family violence laws of Wisconsin, or a person similarly situated to a spouse of the complainant, by a person with whom the complainant shares a child in common,

~~(2) 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~~

~~(3) shares a child in common with the complainant, or~~

~~(4)~~ 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.

[\[See § UWS 1.15, Wis. Admin. Code & 34 C.F.R. § 106.2 Sex-based harassment \(3\)\(iii\).\]](#)

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.~~ [The operations of an institution which include, but are not limited to, conduct:](#)

[\(1\) that is subject to the institution's disciplinary authority;](#)

[\(2\) over which the university exercised substantial control; ~~or over both the respondent and the context in which the relevant misconduct occurs, and also includes any~~](#)

~~(3)~~ [that occurs in a](#) building owned or controlled by a student organization that is officially recognized by the university.

[\[See § UWS 1.16, Wis. Admin. Code & 34 C.F.R. § 106.2 Program or activity & .11.\]](#)

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)

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. \[See § UWS 1.17, Wis. Admin. Code. Moved from "Sexual Assault."\]](#)

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, or 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.~~

[Replaced with "Title IX Complaint."]

Hostile Environment Harassment Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the institution's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (1) The degree to which the conduct affected the complainant's ability to access the institution's education program or activity;
- (2) The type, frequency, and duration of the conduct;
- (3) The parties' ages, roles within the institution's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) The location of the conduct and the context in which the conduct occurred; and
- (5) Other sex-based harassment in the institution's education program or activity

[See § UWS 1.18, Wis. Admin. Code & 34 C.F.R. § 106.2 *Sex-based harassment* (2). Partially replaces "Sexual Harassment."]

Impermissible Evidence. Any of the following:

- (1) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- (2) Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to a party, unless the institution obtains the party's voluntary, written consent to do so in relation to the investigation and disciplinary process; or
- (3) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent

that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

[See § UWS 1.19, Wis. Admin. Code & 34 C.F.R. § 106.45(b)(7).]

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.

[See § UWS 1.21, Wis. Admin. Code.]

Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as provided in s. 944.06, Stats. [See § UWS 1.22, Wis. Admin. Code. Moved from "Sexual Assault."]

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>

Party. "Party" means any respondent or complainant. [See § UWS 1.23, Wis. Admin. Code & 34 C.F.R. § 106.2 Party.]

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. [See § UWS 1.067, Wis. Admin. Code.]

Quid Pro Quo Harassment. An employee, agent, or other person authorized by the institution to provide an aid, benefit, or service under the recipient institution's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct. [See § UWS 1.24 & 34 C.F.R. § 106.2 Sex-based harassment (2). Partially replaces "Sexual Harassment."]

Rape. "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. [See § UWS 1.25, Wis. Admin. Code. Moved from "Sexual Assault."]

Relevant. Related to the allegations of Title IX misconduct under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged Title IX misconduct occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Title IX misconduct occurred.

[See § UWS 1.26, Wis. Admin. Code & 34 C.F.R. § 106.2 *Relevant*.]

Remedies. Measures provided, as appropriate, to a complainant or any other person the recipient institution identifies as having had their equal access to the recipient institution's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient institution's education program or activity after an recipient institution determines that sex discrimination occurred.

[See § UWS 1.27 Wis. Admin. Code & 34 C.F.R. § 106.2 *Remedies*.]

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, is alleged to have violated the institution's prohibition on Title IX misconduct, and who was subject to those prohibitions when the misconduct occurred.

[See § UWS 1.28, Wis. Admin. Code & 34 C.F.R. § 106.2 *Respondent*.]

Responsible Employee. Any employee (other than a "confidential resource employee") who has been given the duty of reporting incidents of sexual Title IX 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.

[Replaced with "Title IX Retaliation."]

Sex. Sex includes, but is not limited to:

- (1) sex stereotypes,
- (2) sex characteristics,
- (3) pregnancy or related conditions,
- (4) sexual orientation, and
- (5) gender identity.

[See § UWS 1.29; 34 C.F.R. § 106.10; *Whitaker v. Kenosha School District*, 858 F.3d 1034 (7th Cir. 2017); & Wis. Stat. § 36.12

Sex-based harassment. “Sex-based harassment” means sexual harassment and other harassment on the basis of sex, that meets any of the definitions in this chapter of quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation.

[See § UWS 1.31 & 34 C.F.R. s. 106.2 Sex-based harassment.]

Sex Discrimination. “Conduct on the basis of sex that excludes a person from participation in, denies a person the benefits of, or subjects a person to differential treatment under any education program or activity and includes, but is not limited to, sex-based harassment and sexual exploitation. Notwithstanding anything to the contrary contained in this section, nothing contained herein shall be construed to prohibit an institution from any of the following:

- (1) Maintaining separate living facilities for different sexes;
- (2) Operating or sponsoring separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport; or
- (3) Any other activity that is expressly permitted by 20 U.S.C. ch. 38 and 34 C.F.R. Part 106.

[See § UWS 1.32; 20 U.S.C. §§ 1681-1688; & 34 C.F.R. § 106.2 Sex-based harassment & .41(b).]

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 of fondling, incest, rape, or statutory rape in this policy. [See § UWS 1.33 & 34 C.F.R. § 106.2 Sex-based harassment (3)(i).];

- 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 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.

[\[See § UWS 1.34, Wis. Admin. Code.\]](#)

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 a university sponsored or supported activity.~~

[Replaced with "Hostile Environment Harassment" & "Quid Pro Quo Harassment."]

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:

(1) fear for their safety or the safety of others; or

~~(1)(2)~~ suffer substantial emotional distress.

[See § UWS 1.35, Wis. Admin. Code & 34. CFR § 106.2 Sex-based harassment (3)(iv).]

Statutory rape. "Statutory rape" means sexual intercourse with a complainant who is under the statutory age of consent as provided in s. 948.02, Stats. [See § UWS 1.36, Wis. Admin. Code. Moved from "sexual assault."]

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~~ has gained admission to that institution and has the right under institutional policies to register for classes without reapplying to that institution. [See ~~Chapter~~ § UWS 17.02(14), Wis. Admin. Code & 34 C.FR. § 106.2 Student.]

Supportive measures.

(1) Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

(a) Restore or preserve that party's access to the institution's education program or activity, including measures that are designed to protect the safety of the parties or the institution's educational environment; or

(b) Provide support during the institution's grievance procedures or informal resolution process under subch. III of ch. UWS 4, subch. III of ch. UWS 11, subch. UWS 17, or any other similar process established by institution policy.

(2) Supportive measures may vary depending on what the institution deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

[See § UWS 1.37, Wis. Admin. Code & 34 C.F.R. §§ 106.2 Supportive measures & .44(g).]

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 Complaint. An oral or written request to the institution that objectively can be understood as a request for the institution to investigate and make a determination about alleged Title IX misconduct. The following persons have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the institution investigate and make a determination about alleged Title IX misconduct:

(1) A complainant;

(2) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or

(3) The Title IX Coordinator, after making the determination required.

(4) With respect to complaints of sex discrimination other than sex-based harassment alleging an individual violated the institution's prohibition on Title IX misconduct, in addition to the persons listed in subsections (1) through (3) of this section,

(a) Any student or employee; or

(b) Any person other than a student or employee who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination.

A complaint under section 4 is not a Title IX Complaint under subchapter III of chapter UWS 4, subchapter III of chapter UWS 11, subchapter III of chapter UWS 17, or Appendix C of this policy, unless an individual listed in sections 1-3 also initiates a Title IX Complaint about the same alleged Title IX misconduct.

[See § UWS 1.38, Wis. Admin. Code & 34 C.F.R. ss. 106.2 Complaint & .45(a)(2). Replaces "Formal Title IX Complaint."]

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. [See 34 C.F.R. § 106.8(a).]

Title IX Misconduct: A report of sexual harassment or sexual violence Sex discrimination and Title IX retaliation as defined by 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). [See § UWS 1.39, Wis. Admin. Code.]

~~**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.~~

Title IX Retaliation. Intimidation, threats, coercion, or discrimination against any person by the institution, a student, or an employee or other person authorized by the institution to provide aid, benefit, or service under the institution's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has

reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Title IX misconduct, including in grievance procedures or in an informal resolution process under subch. III of ch. UWS 4, subch. III of ch. UWS 11, subch. III of ch. UWS 17, or any other similar process established by institution policy. Nothing in this definition precludes an institution from requiring an employee or other person authorized by an institution to provide aid, benefit, or service under the institution's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under subch. III of ch. UWS 4, subch. III of ch. UWS 11, subch. III of ch. UWS 17, or any other similar process established by institution policy. Title IX retaliation includes peer retaliation, which is Title IX retaliation by a student against another student.

[See § UWS 1.41, Wis. Admin. Code & 34 C.F.R. s. 106.2 *Peer retaliation & Retaliation*. Replaces "Retaliation."]

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

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.

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 institution~~ employees other than faculty and academic staff employees. This includes employees who otherwise do not have the right to a formal disciplinary process. ~~[See 34 C.F.R. § 106.45(b)(8).]~~

The disciplinary process in Chapter UWS 4 applies to faculty employees and the process in Chapter UWS 11 applies to academic staff employees. ~~If a Title IX complaint is consolidated with an allegation of non-Title IX misconduct, the institution shall use the procedures in this Appendix.~~ The ~~university institution~~ 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 institution~~ 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 An university institution~~ may dismiss or discipline an employee for Title IX misconduct only after due notice and hearing. The burden of proof is on the ~~university institution's~~ administration. ~~[See 34 C.F.R. § 106.45(b)(3) & 46(c)(1)(i).]~~

~~No person designated as a Title IX Coordinator, investigator, decisionmaker, hearing committee member, or hearing examiner may have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual party. The decisionmaker may be the same person as the Title IX Coordinator or investigator. [See 34 C.F.R. § 106.45(b)(2).]~~

Definitions.

This policy uses the definitions in Appendix B of Regent Policy Document 14-2, hereby incorporated into this policy.

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:
- a. **"Rape"** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
 - b. **"Fondling"** means the touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the complainant's age or because of the complainant's temporary or permanent mental incapacity.
 - c. **"Incest"** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as per s. 944.06, Stats.
 - d. **"Statutory Rape"** means sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.
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, including, but not limited to a mandatory training, and/or a suspension without pay. [See 34 C.F.R. § 106.45(l)(2).]

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.~~
- ~~2.1. The university institution may dismiss ~~formal~~ Title IX complaints against an employee covered by this Appendix under any of the following conditions:~~
- ~~a. The institution is unable to identify the respondent after taking reasonable steps to do so. [See 34 C.F.R. § 106.45(d)(1)(i).] The complainant formally requests in writing to withdraw the formal Title IX complaint.~~
 - ~~b. The respondent is not participating in the institution’s education program or activity and is not employed by the institution. The employee is no longer employed by the university. [See 34 C.F.R. § 106.45(d)(1)(ii).]~~
 - ~~c. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint by a Title IX coordinator, and the institution determines that, without the complainant’s withdrawn allegations, the conduct that remains alleged in the Title IX complaint, if any, would not constitute Title IX misconduct even if proven. Specific~~

~~circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal Title IX complaint. When dismissing a complaint alleging sex-based harassment involving a student party, an institution must obtain the complainant's withdrawal in writing if dismissing a complaint based on the complainant's voluntary withdrawal of the complaint or allegations. [See 34 C.F.R. §§ 106.45(d)(1)(iii) & .46(d)(2).]~~

~~c.d.~~ The institution determines the conduct alleged in the Title IX complaint, even if proven, would not constitute Title IX misconduct. Prior to dismissing the complaint under this paragraph, the institution must make reasonable efforts to clarify the allegations with the complainant. [See 34 C.F.R. § 106.45(d)(1)(iv).]

~~3.2.~~ The university institution generally shall generally decide whether to dismiss a ~~formal~~ Title IX complaint within 30 days of its receipt of the ~~formal~~ complaint, but the ~~university institution~~ may extend this ~~at~~ timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. If a ~~formal~~ complaint is dismissed, the university institution shall ~~provide notice~~ notify all parties of the dismissal in writing, and including the reasons for the dismissal and any bases for an appeal of the dismissal ~~therefore to the employee and complainant in writing~~. [See 34 C.F.R. §§ 106.45(b)(4) & (d)(2)-(3) & .46(d)(1) & (e)(5).]

~~4.3.~~ Within 20 days of receipt of the notice of dismissal, ~~the complainant or employee any party~~ may appeal the dismissal by filing a written appeal with the chancellor's designee (hereinafter "chancellor's designee"). ~~The complainant or employee any party~~ may appeal on any of the following bases:

- a. Procedural irregularity that ~~affected would change~~ the outcome of the matter. [See 34 C.F.R. § 106.46(i)(1)(i).]
- b. New evidence that was not reasonably available at the time of the dismissal that ~~could affect would change~~ the outcome of the matter. [See 34 C.F.R. § 106.46(i)(1)(ii).]
- c. The university institution employee making the dismissal decision had a conflict of interest or bias for ~~the employee or against the complainant an individual party~~, or for or against complainants or respondents generally, that ~~affected would change~~ the dismissal decision. [See 34 C.F.R. § 106.46(i)(1)(iii).]

[See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

~~5.4.~~ The chancellor's designee shall provide ~~the employee and complainant all parties~~ 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 all parties~~ within 30 days of receipt of a written appeal. The institution may

extend this timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. The chancellor's designee's decision on the appeal of a dismissal shall include the chancellor's designee's rationale for the decision and shall be final. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

~~6.5.~~ If the dismissal is appealed, the institution must notify the parties of any appeal, including notice of the allegations consistent with s. 4.15(2) if notice was not previously provided to the respondent. 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. [See 34 C.F.R. § 106.45(d)(3).]

Investigation of Title IX ~~misconduct allegations~~ complaint.

1. Unless the ~~university~~ institution dismisses a ~~formal~~ Title IX complaint, the ~~university~~ institution shall appoint an investigator to conduct an investigation of the allegations in the ~~formal~~ complaint. The burden is on the institution—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Title IX misconduct occurred. [See 34 C.F.R. s. 106.45(f)(1).]
2. The investigator shall provide ~~the employee and the complainant~~ A all parties with a notice of investigation. The notice shall include all of the following information:
 - a. The grievance process, including informal resolution options. [See 34 C.F.R. § 106.45(c)(1)(i).]
 - b. Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute Title IX misconduct, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the institution. 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. [See 34 C.F.R. § 106.45(c)(1)(ii).]
 - c. A statement that Title IX retaliation is prohibited. [See 34 C.F.R. § 106.45(c)(1)(iii).]
 - ~~c.d.~~ A statement affirming the employee is presumed not responsible for the alleged Title IX misconduct until a determination is made pursuant to this subchapter and that prior to the determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker violation until the disciplinary process finds otherwise. [See 34 C.F.R. § 106.46(c)(1)(i).]

- ~~d.e.~~ The employee and the complainant ~~All parties~~ have the right to an advisor of their choice to serve in the role set out in this subchapter, and that advisor may be, but is not required to be, an attorney. [See 34 C.F.R. § 106.46(c)(1)(ii).]
- ~~e.f.~~ The employee and the complainant ~~All parties~~ have the right to inspect and review the relevant and not otherwise impermissible evidence. [See 34 C.F.R. §§ 106.45(c)(1)(iv) & .46(c)(1)(iii).]
- ~~f.g.~~ Information about any code of conduct rules which prohibit ~~the employee or the complainant~~ any party from knowingly making false statements or submitting false information during the disciplinary process. [See 34 C.F.R. § 106.46(c)(1)(iv).]
3. ~~The~~ All parties shall receive an amended notice of investigation any time additional charges are added or any charges are materially amended or consolidated with other charges 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. Title IX complaints may be consolidated with cases of non-Title IX misconduct if they arise out of the same facts or circumstances. [See 34 C.F.R. §§ 106.45(c)(2) & .46(c)(2).]
4. To the extent the institution has reasonable concerns for the safety of any person as a result of providing this notice, the institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes. [See 34 C.F.R. § 106.46(c)(3).]
- 4.5. ~~The university institution's~~ investigator shall do all of the following:
- a. ~~Provide both the employee and the complainant~~ all parties an equal opportunity to provide witnesses, including fact and expert witnesses who may be interviewed by the investigators and other inculpatory and exculpatory evidence. [See 34 C.F.R. §§ 106.45(f)(2) & .46(e)(4) & (6).]
- ~~a.b.~~ Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate. [See 34 C.F.R. § 106.46(e)(1).]
- c. Prohibit redisclosing information a party would not have access to if they had not participated in procedures under this policy, unless it is for the following purposes: ~~Not restrict the ability of either the employee or complainant to discuss the allegations under investigation or to gather and present relevant evidence.~~
1. To obtain and present evidence, including by speaking to witnesses, to the extent it does not ~~constitute~~ constitute Title IX retaliation;

2. To consult with the individual's family members, confidential resources, or advisors;
3. To otherwise prepare for or participate in the procedures under this policy;
4. To provide the information to an officer, agent, or employee of the institution with a legitimate need to know the information; or
5. To make a disclosure required or expressly permitted by the operation of law.

[See 34 C.F.R. §§ 106.45(b)(5) & (f)(4)(iii).]

- ~~b.d.~~ Provide ~~the employee and complainant all parties~~ 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. [See 34 C.F.R. ss. 106.46(e)(2)-(3).]
- ~~e.~~ Provide ~~both the employee and the complainant all parties and their advisors~~ 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, a party or other source, so that the employee and complainant can meaningfully respond to the evidence prior to conclusion of the investigation~~ access the relevant and not otherwise impermissible evidence. [See 34 C.F.R. §§ 106.45(f)(4)(i) & .46(e)(6).]
- ~~e.f.~~ Objectively evaluate all relevant and not otherwise impermissible evidence—including both inculpatory and exculpatory evidence—and not base credibility determinations on a person's status as complainant, respondent, or witness. [See 34 C.F.R. s. 106.45(b)(6).]
- ~~5.6.~~ As part of its investigation and disciplinary process, the ~~university institution~~ 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~~ any impermissible evidence as defined by

this policy, except as necessary to determine whether an exception in that definition applies. [See 34 C.F.R. s. 106.45(b)(7).]

- ~~6.7.~~ The university institution'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 for good cause and with simultaneous notice to all parties that includes the reason for the delay. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

Review of evidence.

1. Prior to completion of the final investigative report, the investigator shall send to ~~the employee and complainant~~ all parties and their respective advisors, if any, the relevant and not otherwise impermissible evidence gathered during the investigation for inspection and review by ~~the employee and the complainant~~ all parties. The evidence may be provided in an electronic format or a hard copy. The evidence provided includes evidence upon which the university institution 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~~ all parties to meaningfully respond to the evidence prior to conclusion of the investigation. [See 34 C.F.R. § 106.46(f)(4)(ii).]
2. ~~The employee and the complainant~~ All parties shall have at least 10 days to submit a written response to the evidence. The investigator will consider any written responses submitted within that timeframe prior to completion of the final investigative report. [See 34 C.F.R. ss. 106.45(b)(4) & .46(e)(5).]

Final Investigative Report.

The investigator shall create a final investigative report that fairly summarizes the relevant and not otherwise impermissible evidence and send the report simultaneously to the employee, the complainant, all parties 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 at least 10 days prior to a hearing.~~ The university institution shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless ~~both the employee and the complainant~~ both all parties waive, in writing, the right to such a hearing. If all parties waive their right to a hearing, the hearing examiner or hearing committee shall prepare a decision based on the record. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

Hearing Examiner or Hearing Committee.

1. The chancellor of each university institution shall designate a Title IX conduct hearing examiner or hearing committee to hear employee dismissal and discipline cases. The

university institution 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 for good cause and with simultaneous notice to all parties that includes the reason for the delay. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

Adequate Due Process. [See 34 C.F.R. ss. 106.45(g) & .46(f).]

1. A fair hearing ~~for an employee against whom seeking~~ dismissal or other discipline ~~is sought of an employee for Title IX misconduct~~ shall include all of the following for all parties, subject to the express limitations of this policy:
 - 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~~ all parties 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~~ Each party's advisor ~~or counsel~~ may ask all witnesses relevant questions and follow-up questions, including those challenging credibility, except as expressly provided in this policy. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. In cases of sex-based harassment involving a student party, if the employee does any party does not have an advisor, the university institution shall provide the employee that party, without charge, an advisor of the ~~university institution's~~ choice to conduct cross-examination on behalf of ~~the employee that party.~~ The advisor may be an attorney. In all other cases of Title IX misconduct, if a party does not have an advisor, the hearing committee or hearing examiner shall conduct questioning in the manner provided in this policy. [See 34 C.F.R. §§ 106.46(e)(2) & (f)(1)(ii).]
 - e. A right to confront and cross-examine adverse witnesses, subject to the express limitations of this policy. ~~The employee's or complainant's~~ A party's advisor shall conduct cross examination directly, orally, and in real time, subject to the express limitations of this policy. ~~The employee and the complainant~~ A party may not personally conduct cross-examination. The hearing examiner or hearing

~~committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing committee or hearing examiner must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions. 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, 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. [See 34 C.F.R. §§ 106.46(e)(2) & (f)(1)(ii) & (4).]~~

- f. A verbatim record of all hearings, which might be a sound recording, made available at no cost for inspection and review. [See 34 C.F.R. s. 106.46(g).]
- 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~~ A description of the alleged ~~ations potentially constituting~~ Title IX misconduct. [See 34 C.F.R. § 106.46(h)(1)(i).]
 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~~ all parties, interviews with ~~the employee, the complainant, all parties~~ 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~~ Information about the policies and procedures that the institution used to evaluate the allegations. [See 34 C.F.R. § 106.46(h)(1)(ii).]
 4. An evaluation of the relevant and not otherwise impermissible evidence and determination whether Title IX misconduct occurred. [See 34 C.F.R. § 106.46(h)(1)(iii).]

5. When the decisionmaker finds that Title IX misconduct occurred, any disciplinary sanctions the institution will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the institution to the complainant, and, to the extent appropriate, other students identified by the institution to be experiencing the effects of the Title IX misconduct. [See 34 C.F.R. § 106.46(h)(1)(iv).]

6. The university institution's procedures and permissible bases for complainant and employee any party to appeal. [See 34 C.F.R. § 106.46(h)(1)(v).]

[See 34 C.F.R. §§ 106.45(h)(1) & .46(h).]

~~h.a. 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.h. Upon the request of any party, the institution must conduct the live hearing with the parties physically present in separate locations, with technology enabling the hearing committee or hearing examiner to simultaneously see and hear the party or the witness while that person is speaking. 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. [See 34 C.F.R. § 106.46(f)(3).]

2. The complainant shall have all Notwithstanding the rights provided to the employee all parties in sub. (1)(a) to (h+), all of the following shall apply:-
 - a. If a party or witness provides good cause not to be questioned by an advisor and agrees to submit to questioning by the hearing committee or hearing examiner and the hearing committee or hearing examiner finds that such good cause exists, the hearing committee or hearing examiner shall ask all relevant and not

otherwise impermissible, unclear, or harassing questions, including those challenging credibility, submitted by a party or their advisor. [See 34 C.F.R. §§ 106.46(e)(2) & (f)(1)(ii).]

- b. Admissibility of evidence is governed by s. 227.45 (1) to (4), Stats., and the prohibition on impermissible evidence in this policy. Only relevant and not otherwise impermissible, unclear, or harassing questions may be asked of the employee, the complainant, and any party or witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant, otherwise impermissible, unclear, or harassing and explain the decision to exclude a question as not relevant, otherwise impermissible, unclear, or harassing. The hearing committee or hearing examiner must give a party or their advisor an opportunity to clarify or revise a question that the hearing committee or hearing examiner has determined is unclear or harassing. If a question or revised question is relevant and not otherwise impermissible, unclear, or harassing the question must be asked. 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. [See 34 C.F.R. §§ 106.46(f)(3) & s. UWS 4.15(1)(h).]

Procedural Guarantees.

Any hearing held shall comply with the requirements set forth in the preceding section. All of the following requirements shall also be observed:

1.—

1. The burden of proof of the existence of just cause to support dismissal, or of grounds to support other discipline, is on the university institution's administration.

2.—

2. The standard of proof shall be a preponderance of the evidence. [See 34 C.F.R. § 106.45(h)(1).]

3.—

3. No employee who participated in the investigation of allegations leading to the filing of a statement of charges the Title IX complaint, 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 addressing that Title IX complaint.

~~4.—~~

4. No ~~university~~ employee of the institution or other person who participated in the investigation of ~~allegations leading to the filing of a statement of charges~~ the Title IX complaint, 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.

~~5.—~~

5. The hearing shall be closed unless ~~the employee~~ any party requests an open hearing, in which case it shall be open. Note: See subch. V of ch. 19, Stats., Open Meetings of Governmental Bodies.

~~6.—~~

6. The hearing committee may, on a motion ~~of the complainant or the employee~~ from any party, 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.

~~7.—~~

7. 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. [See 34 C.F.R. s. 106.46(b)(7)(i).]

~~8.—~~

8. 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.

~~9.—~~

9. Nothing in this section shall prevent the settlement of cases by mutual agreement between the ~~university~~ institution's administration, the complainant, and the employee.

~~10.—~~

~~11-10.~~ The hearing committee or hearing examiner may grant a Ddelay or adjournment of the hearing for good cause ~~may be granted~~ with simultaneous notice to all parties

~~that includes the reason for the delay. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).] 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~~ all parties, within 30 days after ~~the~~ conclusion of the hearing, ~~or otherwise as soon as practicable,~~ a verbatim record of the testimony and a copy of its factual findings and recommendations. The hearing committee or hearing examiner may extend that timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

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~~ all parties 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~~ any party. 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~~ any party. 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. The institution may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]
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. [The institution may extend this timeline as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. \[See 34 C.F.R. §§ 106.45\(b\)\(4\) & .46\(e\)\(5\).\]](#)

Appeal to Chancellor. [\[See 34 C.F.R. §§ 106.45\(i\) & .46\(i\).\]](#)

1. [In cases of sex-based harassment involving a student party or where a university staff member is the respondent, any party](#) ~~The employee or 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~~ [Any party](#) may appeal to the chancellor on the following bases:
 - a. Procedural irregularity that ~~affected would change~~ the outcome of the matter. [\[See 34 C.F.R. § 106.46\(i\)\(1\)\(i\).\]](#)
 - b. New evidence that was not reasonably available at the time of the live hearing that ~~could affect would change~~ the outcome of the matter. [\[See 34 C.F.R. § 106.46\(i\)\(1\)\(ii\).\]](#)
 - 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 an individual party~~, or ~~for or~~ against complainants and respondents generally, that ~~affected would change~~ the outcome. [\[See 34 C.F.R. § 106.46\(i\)\(1\)\(iii\).\]](#)
3. ~~The complainant and the employee~~ [All parties](#) shall be notified of any appeal to the chancellor.
4. The chancellor shall permit ~~the complainant and employee~~ [all parties](#) 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~~ [All parties](#) 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~~ All parties shall be notified of the chancellor's decision at the same time as the employee. This decision shall be deemed final unless the Board of Regents for the University of Wisconsin System ("board"), 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. The institution may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. [See 34 C.F.R. §§ 106.45(b)(4) & .46(e)(5).]

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. 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.
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~~ would change the outcome of the matter. [See 34 C.F.R. § 106.46(i)(1)(i).]
 - b. New evidence that was not reasonably available at the time of the live hearing that ~~could affect~~ would change the outcome of the matter. [See 34 C.F.R. § 106.46(i)(1)(ii).]

- c. Conflict of interest or bias for or against ~~the university staff member or complainant an individual party~~, or ~~for or~~ against complainants ~~and or~~ respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that ~~affected would change~~ the outcome. [\[See 34 C.F.R. § 106.46\(i\)\(1\)\(iii\).\]](#)
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. [The board may extend any of these timelines as necessary for good cause and with simultaneous notice to all parties that includes the reason for the delay. \[See 34 C.F.R. §§ 106.45\(b\)\(4\) & .46\(e\)\(5\).\]](#)
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.

Proposed Appendix D: Template Notice of Nondiscrimination

Section 106.8(c) of the 2024 amendments to 34 C.F.R. Part 106 also requires each institution to provide a **notice of nondiscrimination** to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the institution. Nothing prevents a institution from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the institution under Title IX.

The following sample notice of nondiscrimination meets the minimum requirements of the 2024 amendments:

University of Wisconsin - [Institution] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission¹ and employment.

Inquiries about Title IX may be referred to the University's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights,² or both. the University's Title IX Coordinator is [name or title, office address, email address, and telephone number].

The University's nondiscrimination policy and grievance procedures can be located at [include link to location(s) on website or otherwise describe location(s)].

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [include link to location(s) on website or otherwise describe location(s)].

If necessary, due to the format or size of any publication, the 2024 amendments provide that a institution may instead include in those publications the information covered in the following statement:

The University of Wisconsin – [Institution] prohibits sex discrimination in any education program or activity that it operates. Individuals may report concerns or questions to the

¹ As noted above, Title IX only prohibits institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education from discriminating based on sex in admission, see § 106.15(d), and thus only such institutions must state in their notice of nondiscrimination that they do not discriminate on the basis of sex in admission.

²

Contact information for OCR is available here: <https://ocrcas.ed.gov/contact-ocr>.

Title IX Coordinator. The notice of nondiscrimination is located at [insert website address].

Proposed Appendix E: Complaints Against an Institution

This Appendix E applies to the investigation and resolution of complaints that an institution's policies, programs or practices discriminate on the basis of sex. It does not apply to Title IX complaints alleging individual misconduct. The institution is not considered a respondent for the purpose of complaints implicating an institution's policies, programs or practices.

Definitions

Unless otherwise expressly provided, this Appendix uses the definitions in Appendix B of this Regent Policy Document 14-2.

Appendix E Complaint. An oral or written request to the institution that objectively can be understood as a request for the institution to investigate and make a determination about whether an institution's policies, programs, or practices discriminate on the basis of sex. The following persons have a right to make such a complaint:

- (1) A complainant;
- (2) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- (3) The Title IX Coordinator, after making the determination required.
- (4) With respect to complaints of sex discrimination other than sex-based harassment alleging an individual violated the institution's prohibition on Title IX misconduct, in addition to the persons listed in subsections (1) through (3) of this section,
 - (a) Any student or employee; or
 - (b) Any person other than a student or employee who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination.

[See 34 C.F.R. ss. 106.2 Complaint & .45(a)(2).]

No Bias

No person designated as Title IX Coordinator, investigator, or decision-maker may have a conflict of interest or bias for or against complainants generally or a Complainant. The decision-maker may be the same person as the Title IX Coordinator or investigator. [See 34 C.F.R. § 106.45(b)(2).]

Initial Review by Title IX Coordinator

Upon receipt of an Appendix E Complaint, the Title IX Coordinator will review such Appendix E complaint, and if necessary, conduct a preliminary inquiry to determine if the Appendix E Complaint is appropriately handled under this Appendix E.

After initial review, and at any point thereafter based on information that becomes available to the Title IX Coordinator, the Title IX Coordinator may:

- (1) Proceed with investigating the Appendix E Complaint;
- (2) Make a determination that it is a Title IX complaint against one or more individuals, in which case the provisions detailed in subchapter III of chapter UWS 4, subchapter III of chapter UWS 11, subchapter III of chapter UWS 17 or Appendix C of this Regent Policy Document 14-2 would apply to such allegations;
- (3) Determine that the Appendix E Complaint contains both a Title IX complaint against one or more individuals and allegations that may implicate the institution's policies, programs or practices. In which case, the Title IX Coordinator may bifurcate the Title IX Complaint and proceed both under this Appendix E and subchapter III of chapter UWS 4, subchapter III of chapter UWS 11, subchapter III of chapter UWS 17 or Appendix C of this Regent Policy Document 14-2; or
- (4) Dismiss all or a portion of the Appendix E Complaint as detailed below.

Dismissal

In determining whether to dismiss all or a portion of an Appendix E Complaint, the Title IX Coordinator should consider:

- (1) If the Complainant, if any, voluntarily withdraws any or all of the allegations in the Appendix E Complaint, the Title IX Coordinator declines to initiate an Appendix E Complaint as provided in Appendix B, and the institution determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Appendix E Complaint, if any, would not constitute discrimination on the basis of sex even if proven; and
- (2) If the conduct alleged in the Appendix E Complaint, even if proven, would not constitute discrimination on the basis of sex. In cases involving a Complainant, prior to dismissing the Appendix E Complaint under this paragraph, the institution must make reasonable efforts to clarify the allegations with the Complainant.

The institution shall generally decide whether to dismiss an Appendix E Complaint within 30 days of receipt of such complaint. The institution may extend this timeline as necessary with good cause and, in cases involving a Complainant, with notice to the Complainant that includes the reason for the delay.

If an Appendix E complaint filed by a Complainant is dismissed, the institution shall provide notice of dismissal, reasons therefore, and bases for the appeal thereof to the Complainant in writing. In which case, within 20 days of receipt of notice of dismissal, the Complainant may appeal the dismissal by filing a written appeal with the chancellor's or president's designee. The Complainant may appeal on any of the following bases:

- a. Procedural irregularity that would change the outcome of the matter.
- b. New evidence that was not reasonably available at the time of the dismissal that would change the outcome of the matter.

- c. The employee of the institution making the dismissal decision had a conflict of interest or bias against the Complainant, or against complainants generally, that would change the dismissal decision.

Investigation of Appendix E Complaints

Unless the institution dismisses the Appendix E Complaint, the institution shall:

- (1) Appoint an investigator to conduct an investigation. The burden is on the institution to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;
- (2) Provide Complainant, if any, an opportunity to provide witness names and evidence in support of their Appendix E Complaint;
- (3) Permit the Complainant, if any, to be accompanied by an advisor of their choice during any meetings relating to the investigation of their Appendix E Complaint;
- (4) Review and objectively evaluate all evidence gathered through the investigation and determine what evidence is relevant and permissible;
- (5) Use a preponderance of the evidence standard of proof to determine whether discrimination on the basis of sex occurred; and
- (6) If a determination is made that discrimination on the basis of sex occurred, determine remedies for the Complainant, if any, or others as applicable, and take other appropriate prompt and effective steps to ensure that discrimination on the basis of sex does not occur or recur.

Investigative Report

The investigator shall create a final investigative report that fairly summarizes relevant evidence, and any recommended modifications to the institution's policies, programs and practices.

Prior to completion of the final investigative report, the investigator will send a draft of the report to the Complainant, if any (and their advisor, if any) for review and response. The Complainant will have 10 days to submit a response to the draft report to the investigator. The investigator will consider any written responses submitted within that timeframe prior to the completion of the final investigative report

The investigator will send the final written investigation report to Chancellor or Chancellor's designee, or President or President's designee and the Complainant, if any. The institution'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 this time frame for good cause with notice to the Complainant, if any, that includes the reason for the delay.

Within 10 days after receipt of the investigation report, the Complainant, if any, may submit written exceptions to the final investigative report to the chancellor/designee or

president/designee for review. The chancellor/designee or president/designee shall prepare a written decision within: (i) 20 days of the deadline of submission for the written exceptions by the Complainant, if any, or (ii) if there is no Complainant, within 20 days of receipt of the investigator's report. The institution may extend these timelines as necessary for good cause and with notice to the Complainant, if any, that includes the reason for the delay.

The chancellor/designee's or president/designee's decision is final.

Regent Policy Document 14-3 (formerly 83-5)

~~Equal Opportunities in Education:~~ ~~Elimination of Discrimination Barriers~~ ~~to Access Based on Gender Sex~~

~~I. Policy Statement:~~

Scope:

~~This policy applies to all University of Wisconsin System institutions and programs.~~

Purpose:

~~Title IX of the Higher Education Act states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."~~

~~The University of Wisconsin System prohibits participation in, support for, or sanction of activities that discriminate on the basis of sex, when in fact, no exception can be allowed except on the basis of a bona fide physical dichotomy. The University of Wisconsin System is an equal opportunity educational institution. All University of Wisconsin System funded or sponsored functions and/or activities shall be generally available to all students without regard to gender sex.~~

~~Each institution in the System is directed to:~~

- ~~A. Review all educational functions and activities for discrimination on the basis of gender.~~
- ~~B. Prescribe corrective actions where gender discrimination is identified; and~~
- ~~C. Act affirmatively to eliminate gender stereotypes through leadership in such areas as student support services, public service, instruction/instructional support, and research.~~

~~Each institution will make a yearly report to the President of the University of Wisconsin System, summarizing the results of efforts to identify and eliminate any existing discriminatory practices. The purpose of this policy is to:~~

- ~~(1) express the Board of Regents' commitment to providing an environment free of barriers to access based on sex;~~
- ~~(2) comply with the regulatory requirements regarding pregnant and parenting individuals;~~
- ~~(1)(3) assign oversight responsibility.~~

I. Policy Statement:

II. Guidelines:

Introduction:

Implementation of ~~the Regent Policy on Equal Opportunities in Education~~ this policy is desirably a matter for institution/unit initiative. Problems and problem areas will vary, and the methods used to resolve any identified problems for resolution will also vary. The following guidelines are offered to assist institutions/units as they identify and resolve problems.

The institution/unit program for eliminating discrimination based on gender sex will be strengthened if students, faculty, and administrators are involved in the identification of problem areas and the development of solutions.

A. RECRUITMENT:

Occupational stereotyping by gender sex unduly restricts equal employment opportunities. Such stereotyping probably will continue as long as certain professions are heavily dominated by members of a single gender sex. Departments or divisions in which most students are of one gender sex should exert leadership in modifying stereotypes by striving to attract students of the any underrepresented gender sex into the discipline. Institutions/units should evaluate their recruitment procedures to ~~insure~~ ensure that occupational stereotypes are not reinforced.

B. ADMISSIONS:

Admission at the undergraduate level is currently open to all resident and most nonresident students who meet the prescribed criteria. If any admissions policy or practice appears to have the effect of favoring one gender sex, it should be examined by the ~~faculty-institution~~ to ~~insure~~ ensure that it does not contain gender sex bias. Faculties should give consideration to non-traditional prior learning in assessing qualifications for admission and placement of non-traditional students. At the graduate and professional school level, standards and criteria for admission should be well-publicized and uniformly applied to all applicants without consideration of gender sex.

C. FINANCIAL AIDS:

All forms of student financial aid (fellowships, scholarships, work-study, loans, graduate grants such as teaching assistantships, etc.) should be administered uniformly on the basis of demonstrated individual need and ability, without regard to gender sex. Application and eligibility information, as well as criteria for granting each type of award, should be well publicized. Supplementary awards such as dependency allowances should also be granted without regard to gender sex.

~~If the institution finds that current financial aid statistics show (a) the proportion of students of one gender sex who receive financial aid is smaller than the proportion of that gender who request financial aid, or (b) the average dollar amount of financial aid is higher for recipients of one gender than the other, a study should be made to determine whether policies or practices that have the effect of being discriminatory have caused the discrepancies. When~~

~~discrimination has been determined to exist, corrective action should be taken to ensure that all financial aid in the subsequent school year and thereafter will be granted equitably.~~

Each institution should devise a flexible and fair means by which students eligible for financial aid can continue to qualify and receive such aid after temporary interruption of progress toward a degree. Eligible part-time students should be able to receive financial assistance on a prorated basis. Because many types of grants are restricted to full-time students, it may be advisable to solicit aid for part-time students. ~~Each institution should have a method of recording the number and percent of applicants and those granted financial aid by gender sex, level, type of award and dollar amount.~~

D. COUNSELING:

Each institution should ensure that academic and nonacademic counseling is free from prejudgments or assumptions based on the gender sex of the student.

Career counseling should be based on the individual student's aptitude and interests, and vocational aptitude testing should likewise be unbiased. ~~Those who counsel women should be aware of patterns that show growing numbers of women joining the work force for substantial periods of years, and otherwise increasing their participation in the leadership of society. Faculty and other staff members who do academic counseling of students should keep current with new research and scholarship on changing roles and expectations of women and men in society.~~

In-service training programs, developed or sponsored by the University for counselors, should include up-to-date information and techniques to deal with the unique problems and expectations that both men and women people of all sexes face in college and after.

E. HOUSING:

~~There should be University-owned and/or listed housing available to men and women. Each University should have an equity code to be adhered to by those who wish to list housing with the University.~~

F. CHILD CARE:

As an alternative to community child care, when it does not meet the needs of the institution/unit, each University should, if economically reasonable, set a goal of seeing that top quality, low-cost child care and extended child care services, preferably campus based, are available to the children of students, faculty, and staff.

G. WOMEN'S SEX AND GENDER STUDIES:

Sex-role stereotyping can be eliminated, in part, through education. In its role of shaping educational policy, the faculty of each institution/unit is encouraged to:

1. give support to women's sex and gender studies courses,

2. recruit faculty with an interest in women's sex and gender studies,
3. support research in women's sex and gender studies,
4. integrate the results of women's sex and gender studies research into existing curricula, and,
5. evaluate and recommend for purchase library holdings, including periodical literature, books, and other instructional materials, in the area of women's sex and gender studies.

H. PHYSICAL EDUCATION:

Physical education facilities and courses should be open to all students without regard to gender sex, except where bona fide reasons for separation can be documented.

I. COMPLAINTS/GRIEVANCES PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS:

~~The University mechanism for hearing student complaints/grievances should provide for: consideration of matters related to gender discrimination, and should be well publicized. An appropriate institutional officer should be designated to oversee investigation of such complaints/grievances.~~

~~The University of Wisconsin System, in compliance with Title IX, 20 U.S.C § 1681 et seq., related federal regulations, and Wisconsin State Law, does not discriminate on the basis of sex. Institutions shall adopt policies in compliance with Title IX and other federal laws ensuring equal access to programming and eliminating barriers for individuals who are pregnant or have pregnancy related conditions. **Appendix A** provides a template policy for institutions to customize and adopt.~~

~~[See 34 C.F.R. § 106.21(c), .40, &.57.]~~

J. PLACEMENT SERVICE:

The placement service should guarantee that all services, listings, and interview proceedings are free of discrimination based on gender sex.

K. CO-CURRICULAR ACTIVITIES:

~~Institution/unit support for co-curricular activities, including recreation and intercollegiate athletics, should be equitable for all students. Facilities for co-curricular activities shall be open to recognized student groups without regard to gender. Men and women should be included on University committees that make recommendations on allocation of student segregated fees. Such committees should scrutinize carefully organization requests to assure equitable funding. Committees planning lecture series or forums, arts festivals, performing arts series, and related events should assure that women are included.~~

L. HEALTH SERVICES:

There should be on-going evaluation of health service policies to guarantee quality treatment for ~~both men and women, people of all sexes.~~ ~~Gynecological services are an integral part of a quality health program for women.~~

M. CLASS HOURS:

Institutions/units are urged to make or to continue to make courses available in the evening, early morning and on weekends as well as during the day.

Faculty members should continue providing outreach courses for credit and non-credit, off-campus scheduling of classes including those in general education, independent study, ~~ETN and televised-remote~~ course offerings, and other kinds of continuing education programs consistent with institutional missions. Faculty members should be encouraged to experiment with innovative programs, delivery systems, and teaching strategies to accommodate non-traditional students.

N. SECURITY:

Institutions/units should assure that maximal efforts are made to promote a secure University environment.

~~**O. APPOINTMENT OF STUDENTS TO UNIVERSITY COMMITTEES:**~~

~~Men and women should be represented equitably among student appointments to University committees.~~

~~**P. PUBLICATIONS:**~~

~~Continued effort should be made to include women and men in text and illustrations of catalogs, brochures, and other institutional publications.~~

~~**Q. MONITORING INSTITUTION PROGRESS:**~~

~~An appropriate member of the University administration should be responsible for coordinating efforts to eliminate gender discrimination affecting students. The identification and solution of problems of discriminatory practices should be effected through the cooperative effort of students, faculty/staff, and administration.~~

~~This coordinator should direct compilation of all special reports that analyze University practices to determine whether any discrimination based on gender exists and what solutions are proposed, when such practices are identified. The University should maintain an official file that includes a plan for and results of efforts to provide leadership in eradicating gender stereotypes.~~

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~~This statement of policy and guidelines on Equal Opportunities in Education should be available to students, faculty, staff and administrators in all institutions and units.~~

Definitions:

~~This policy adopts the definitions in Appendix B of Regent Policy Document 14-2.~~

Oversight, Roles, and Responsibilities:

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

Related Regent Policies and Applicable Laws

- ~~RPD 14-2, "Sex Discrimination, Sex-Based Harassment, and **e**Other Title IX Misconduct"~~
- ~~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~~
- ~~Subchapter II of ch. UWS 1, Wis. Admin. Code~~
- ~~Subchapter III of ch. UWS 4, Wis. Admin. Code~~
- ~~Subchapter III of ch. UWS 11, Wis. Admin. Code~~
- ~~Subchapter III of ch. UWS 17, Wis. Admin. Code~~

History: Res. 2927 adopted 10/7/83; amends 74-4.

Proposed Appendix A: Template Policy on Parental, Family, or Marital Status; Pregnancy or Related Conditions

(a) Status generally. The University of Wisconsin-[Institution] (the "institution") will not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

- (1) concerning the current, potential, or past parental, family, or marital status of a student, employee, or applicant that treats students, employees, or applicants differently; or
- (2) That is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) Pregnancy or related conditions.

(1) Nondiscrimination. The institution will not discriminate in its education program or activity against any student, employee, or applicant on the basis of current, potential, or past pregnancy or related conditions or adopt or implement any policy, practice, or procedure that so discriminates. An institution does not engage in prohibited discrimination when it allows a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of its education program or activity provided the institution ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions.

(2) Responsibility to provide Title IX Coordinator contact and other information. The institution will ensure that when a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the institution's education program or activity.

(3) Specific actions to prevent discrimination and ensure equal access. The institution will take specific actions under paragraphs (b)(3)(i) through (vi) of this section to promptly and effectively prevent sex discrimination and ensure equal access to the institution's education program or activity once the student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions. The Title IX Coordinator must coordinate these actions.

(i) Responsibility to provide information about institution obligations. The institution must inform the student, and if applicable, the person who notified the Title IX Coordinator of the student's pregnancy or related conditions and has a legal right to

act on behalf of the student, of the institution's obligations under paragraphs (b)(1) through (5) of this section and 34 CFR § 106.44(j) and provide the institution's notice of nondiscrimination under 34 CFR § 106.8(c)(1).

(ii) Reasonable modifications.

(A) The institution must make reasonable modifications to the institution's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the institution's education program or activity. Each reasonable modification must be based on the student's individualized needs. In determining what modifications are required under this paragraph, the institution must consult with the student. A modification that an institution can demonstrate would fundamentally alter the nature of its education program or activity is not a reasonable modification.

(B) The student has discretion to accept or decline each reasonable modification offered by the institution. If a student accepts an institution's offered reasonable modification, the institution must implement it.

(C) Reasonable modifications may include, but are not limited to, breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

(iii) Voluntary access to separate and comparable portion of program or activity. The institution must allow the student to voluntarily access any separate and comparable portion of the institution's education program or activity under paragraph (b)(1) of this section.

(iv) Voluntary leaves of absence.

(A) The institution must allow the student to voluntarily take a leave of absence from the institution's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a student qualifies for leave under a leave policy maintained by An institution that allows a greater period of time than the medically necessary period, the institution must permit the student to take voluntary leave under that policy instead if the student so chooses. When the student returns to the institution's education program or activity, the student

must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

(B) In the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient must treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(v) *Lactation space.*

(A) The institution must provide reasonable break time for an employee to express breast milk or breastfeed as needed.

(B) The institution must ensure that any student or employee can access a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student or employee for expressing breast milk or breastfeeding as needed.

(vi) *Limitation on supporting documentation.* The institution will not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the institution to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v). Examples of situations when requiring supporting documentation is not necessary and reasonable include, but are not limited to, when the student's need for a specific action under paragraphs (b)(3)(ii) through (v) is obvious, such as when a student who is pregnant needs a bigger uniform; when the student has previously provided the institution with sufficient supporting documentation; when the reasonable modification because of pregnancy or related conditions at issue is allowing a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action under paragraphs (b)(3)(ii) through (v) is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

(4) *Comparable treatment to other temporary medical conditions.* To the extent consistent with paragraph (b)(3) of this section, The institution will treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the institution administers, operates, offers, or participates in with respect to students admitted to the institution's education program or activity.

(5) Certification to participate. The institution will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the institution's class, program, or extracurricular activity unless:

(i) The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;

(ii) The institution requires such certification of all students participating in the class, program, or extracurricular activity; and

(iii) The information obtained is not used as a basis for discrimination prohibited by this policy.

(c) Application inquiries. The institution will not make a pre-admission inquiry as to the marital status of an applicant for admissions, including whether such applicant is "Miss or Mrs." An institution may ask an applicant to self-identify their sex, but only if this question is asked of all applicants and if the response is not used as a basis for discrimination prohibited by this policy.

[See 34 C.F.R. § 106.21(c), .40, &.57.]

Title IX Rulemaking Timeline

Actions	Dates
Board meets to approve preliminary public hearing notice for scope statements (Permanent and Emergency Rule)	6/6/24
Preliminary public hearing for permanent and emergency Rule scope statements	6/14/24
Board meets to review comments from hearing/comment period and approve scope statements	6/26/24
Board meets to approve emergency rule draft, proposed permanent rule draft, and interim RPD 14-2	7/8/24
Emergency Rule goes into effect	8/1/2024
Board meets to approve public hearing notice for permanent and emergency rules	9/26/24
Public hearing on permanent rule	10/8/24
Board meets to approve final draft of permanent rule	11/7/24
Permanent rule goes into effect	4/1/25

Color Key
Board Meeting
Public Hearing
Rule goes into effect