

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

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

ORDER

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

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

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ANALYSIS

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

**Statutory authority:** ss. [36.09 \(1\)\(a\)](#) and [36.15 \(3\)](#), Stats.

**Explanation of agency authority:**

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

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

**Related statute or rule:** N/A

**Plain language analysis:**

*Title IX Sexual Misconduct and Non-Title IX Sexual Misconduct*

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

*Definitions*

The current rule defines sexual misconduct, such as sexual harassment and sexual assault, under the corresponding statutory definitions in the Wisconsin Statutes. The new federal regulations require adoption of definitions for sexual assault, dating violence, domestic violence, and stalking from the federal Clery and Violence Against Women Acts. Additionally, the new federal regulations define sexual harassment for Title IX purposes to include quid pro quo sexual harassment and hostile environment sexual harassment consisting of unwelcome conduct that a reasonable person would determine is severe, pervasive, and objectionably offensive.

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

The current rule contains no definition for "sexual exploitation." The new rule adds a definition of "sexual exploitation" to the list of sexual misconduct that University of Wisconsin System institutions address.

*Title IX Sexual Misconduct Procedures*

Notice

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

### Mandatory Dismissal and Discretionary Dismissal

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

### Investigation

Under the current rule, University of Wisconsin System institutions investigate allegations of sexual misconduct through formal investigations, the investigator provides the opportunity for both parties to meet with the investigator to discuss the allegations, the investigator provides the chancellor with a written report that may include recommended sanctions against the academic staff member, the chancellor, if appropriate, files dismissal charges against the academic staff member and the academic staff member is entitled to a hearing before an academic staff committee.. Under the federal regulations, universities must conduct investigation of formal Title IX complaints via an assigned investigator and must allow the parties an opportunity to present witnesses and evidence as well as review the evidence provided. Investigators must not make official findings of responsibility but may make recommended findings. The new rules incorporate changes to comply with these requirements under the federal regulations.

### Hearing

The current rule provides an academic staff member facing charges of dismissal related to allegations of sexual misconduct with the right to a hearing before an academic staff committee. The federal regulations require universities conduct live hearings with cross-examination conducted directly, orally, and in real time for all Title IX cases. At a live hearing, if a party does not have an advisor, the institution must provide, without fee or charge, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. The parties' advisors must perform cross-examination. A hearing officer or hearing committee must preside over the hearing and determine the relevance of each question and explain any decision to exclude

a question. The new rule incorporates changes to comply with these requirements under the federal regulations.

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

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

**Comparison with rules in adjacent states:**

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

**Summary of factual data and analytical methodologies:**

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

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

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

**Fiscal Estimate:**

See attached Economic Impact Analysis and Fiscal Estimate.

**Effect on small business:**

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

**Agency contact person:**

Sarah Harebo

Title IX and Clery Administrator

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**Public Comments:**

The Board of Regents held a public hearing on November 30, 2020 preceded by a public comment period related to the final rule. During the comment periods, comments could be submitted to the agency in any of the following ways: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov); (2) by email to [compliance@uwsa.edu](mailto:compliance@uwsa.edu); (3) at the public hearing; or (4) by mail to Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin.

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TEXT OF RULE

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

UWS 11

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

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

UWS 11

SUBCHAPTER I

GENERAL

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

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

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

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

(4) Indefinite appointment academic staff dismissal for cause and lesser discipline based on allegations of Title IX misconduct, as defined in s. UWS 11.13, shall be governed by ss. UWS 11.13 to UWS 11.26.

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

**UWS 11.015 Definitions.** In this chapter:

**Section 6. UWS 11.015(2) is repealed.**

**Section 7. UWS 11.015(3m) is created to read:**

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

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

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

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

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

(6m) “Incapacitation” means the state of being unable to physically or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol or drugs affects a person’s decision-

making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

**Section 10. UWS 11.015(8) is repealed.**

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

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

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

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

- (a) Engaging in the following conduct without the knowledge and consent of all participants:
  - 1. Observing, recording, or photographing private body parts or sexual activity of the complainant.
  - 2. Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant.
  - 3. Otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant.
- (b) Masturbating, touching one’s genitals, or exposing one’s genitals in the complainant’s presence without the consent of the complainant, or inducing the complainant to do the same.
- (c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.
- (d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.
- (e) Coercing the complainant to engage in sexual activity for money or anything of value.

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

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

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

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

UWS 11

SUBCHAPTER II

PROCEDURES FOR ACADEMIC STAFF DISMISSAL IN NON-TITLE IX CASES

**Section 13. UWS 11.016 is created to read:**

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

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

(a) *Quid pro quo sexual harassment.*

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

(b) *Hostile environment sexual harassment.*

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



performance or participation in an university sponsored or supported activity.

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

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

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

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

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

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

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

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

(1) The following requirements shall also be observed:

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

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

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

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

- (a) The committee may, on motion of either party, and, if the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, sexual exploitation, or stalking, on the motion of the complainant, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of replacements equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the policies and procedures adopted by the institution.

- (b) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel shall be to advise the committee, consult with them on legal matters, and such other responsibilities as shall be determined by the committee within the provisions of the policies and procedures adopted by the institution.

**Section 17. UWS 11.07 is amended to read:**

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

**Section 18. UWS 11.08 is amended to read:**

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

**Section 19. UWS 11.10 is amended to read:**

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

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

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

(1)

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

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

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

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

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

(a) Within 3 working days of receipt of the report or information, inform the academic staff member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and advise the chancellor as to whether to proceed under this section or ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26. If the university knows the identity of an affected party, the university shall make a reasonable attempt to notify the affected party of the report or information at the same time as the academic staff member. ~~For cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant shall be notified by the chancellor of the receipt of the report or information at the same time as the academic staff member.~~

(b) Upon appointing an investigator and notifying the academic staff member, afford the academic staff member ~~three~~ 3 working days in which to request that the investigator be disqualified on grounds of lack of impartiality or other cause. In the event that the chancellor determines that a request for disqualification should be granted, the chancellor shall, within 2 working days of the determination, appoint a different investigator. The academic staff member shall have the opportunity to request that any second or subsequent investigators be disqualified on grounds of lack of impartiality or other cause. ~~For cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant shall have the disqualification rights that are afforded to the academic staff member in this subsection.~~

(3) Within 3 working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the academic staff member pursuant to ss. UWS ~~11.101 to 11.106~~ 11.28 to 11.33, to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10, to seek dismissal of the academic staff member pursuant to ss. UWS 11.13 to 11.25, to seek an alternative disciplinary sanction, or to discontinue the proceedings. ~~The charges shall be served on the academic staff member in the manner specified in s. UWS 11.02 (2).~~ as follows:

(a) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS ~~11.101 to 11.106~~ 11.28 to 11.33, the chancellor shall file charges within 2 working days of reaching the decision.

(b) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26, the chancellor shall file charges and proceed in accordance with the provisions of those sections of this chapter and implementing institutional policies. If, during the course of proceedings under ss. UWS 11.02 to 11.10 or ss. UWS 11.13 to 11.26, the chancellor receives a report under s. UWS ~~11.103~~ 11.30 or other credible information that the academic staff member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. UWS ~~11.102~~ 11.29 (1) (a), and one or more of the factors listed in s. UWS ~~11.102~~ 11.29 (1) (b) through (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this section.

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

(5) Within 3 working days of receipt of the findings and recommendation of the committee under sub. (4), the chancellor shall prepare a written decision on the matter. In the decision, the chancellor may order dismissal of the staff member, may impose a lesser disciplinary action, or may find in favor of the staff member. The staff member shall be notified of the chancellor's decision in writing. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant shall be notified of the chancellor's decision at the same time as the staff member. If the university knows the identify of an affected party, the university shall make a reasonable attempt to provide the affected party a copy of the chancellor's final decision at the same time as the academic staff member.~~ This decision shall be deemed final unless the board, upon request of the academic staff member, grants a review based on the record. ~~In cases involving sexual assault, dating violence, domestic violence, or stalking, the complainant shall have the same right to a review on the record as the academic staff member.~~

(6) The administration or its representatives shall have the burden of proof to show that just cause exists for dismissal under this chapter. The administration ~~must~~ shall

demonstrate by clear and convincing evidence that the academic staff member engaged in serious criminal misconduct, as defined in s. UWS ~~11.102~~ 11.29, ~~except in cases of sexual assault, dating violence, domestic violence, or stalking, in which the evidentiary standard shall be by a preponderance of the evidence.~~

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

**UWS 11.33 Board review.** A member of the academic staff on an indefinite appointment who has been dismissed for serious criminal misconduct may appeal this action to the board as provided in s. UWS 11.10. If the university knows the identity of an affected party, the board shall make a reasonable attempt to notify the affected party of its decision at the same time as the academic staff member.

## **Section 21. UWS 11.11 is amended to read:**

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

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

**Section 22. UWS 11.12 is amended to read:**

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

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



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

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

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

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

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

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

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

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

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

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

(2) The conduct occurred in the United States.

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

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

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

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

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

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

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

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

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

- (a) The complainant formally requests in writing to withdraw the formal Title IX complaint.
- (b) The academic staff member is no longer employed by the university.
- (c) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal Title IX complaint.

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

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

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

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

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

#### **UWS 11.17 Investigation of Title IX misconduct allegations.**

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

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

- (a) The grievance process, including informal resolution options.
- (b) The allegations of Title IX sexual misconduct with sufficient detail for the academic staff member to prepare a response to the allegations, including the identity of the complainant as well as the date and location of the incident if available.

- (c) A statement affirming the academic staff member is presumed not responsible for the alleged violation until the disciplinary process finds otherwise.
- (d) The academic staff member and complainant have the right to an advisor of their choice.
- (e) The academic staff member and complainant have the right to inspect and review the evidence.
- (f) Information about any code of conduct rules which prohibit the academic staff member or the complainant from knowingly making false statements or submitting false information during the disciplinary process.

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

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

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

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

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

#### **UWS 11.18 Review of Evidence.**

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

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

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

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

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

(2) The hearing committee or the hearing examiner shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held no later than 45 days after

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

### **UWS 11.21 Adequate due process.**

(1) A fair hearing for an academic staff member against whom dismissal or other discipline is sought shall include all of the following:

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

(b) A right to the names of witnesses and of access to documentary and other evidence which serve as the basis for seeking dismissal or other discipline.

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

(d) A right to an advisor, counsel, or other representatives, and to offer witnesses. The academic staff member's or complainant's advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. If the academic staff member does not have an advisor, the university shall provide the academic staff member, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the academic staff member. The advisor may be an attorney.

(e) A right to confront and cross-examine adverse witnesses. The academic staff member's or complainant's advisor shall conduct cross examination directly, orally, and in real time. The academic staff member and the complainant may not personally conduct cross examination. If the academic staff member, the complainant, or a witness does not submit to cross-examination at the hearing, the hearing committee or the hearing examiner may not rely on any statement of the academic staff member, complainant, or witness in reaching its findings and recommendations. However, the hearing committee or hearing examiner may not draw a negative inference in reaching its findings and recommendations based solely on the absence of an academic staff member, complainant, or witness from the hearing or refusal to answer cross-examination or other questions.

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

(g) Written findings of fact supporting the decision based on the hearing record.

The written findings of fact and decision shall include all of the following:

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

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

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

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

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

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

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

(1) Any hearing held shall comply with the requirements set forth in the preceding section. All of the following requirements shall also be observed:

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

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

(c) No academic staff member who participated in the investigation of allegations leading to the filing of a statement of charges, or who participated in the filing of a statement of charges, or who is a material witness, shall be qualified to sit on the hearing committee in that case.

(d) No university employee or other person who participated in the investigation of allegations leading to the filing of a statement of charges, or who participated in the filing of a statement of charges, or who is a material witness, shall be qualified to serve as the hearing examiner in that case.

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

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

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

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

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

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

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

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

#### **UWS 11.23 Hearing Committee or Hearing Examiner Findings and**

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

#### **UWS 11.24 Chancellor's decision.**

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



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

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

#### **UWS 11.25 Appeal to the Board.**

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

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

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

- (a) Procedural irregularity that affected the outcome of the matter.
- (b) New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter.
- (c) Conflict of interest or bias for or against the academic staff member or complainant, or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that affected the outcome.

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

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

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

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

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

UWS 11  
SUBCHAPTER IV  
PROCEDURES FOR DISMISSAL FOR CAUSE IN SPECIAL CASES – INDEFINITE  
ACADEMIC STAFF APPOINTMENTS

**Section 25. UWS 11.27 is created to read:**

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

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

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(END OF TEXT OF RULE)  
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