

STATE OF WISCONSIN
Board of Regents of University of Wisconsin System

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE
Board of Regents of the University of Wisconsin System

PROPOSED ORDER OF THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM
ADOPTING RULES
(CLEARINGHOUSE RULE 15-060)

PROPOSED ORDER

An Order of the Board of Regents of the University of Wisconsin System to amend the Wisconsin Administrative Code, Chapter UWS 17, Nonacademic Student Misconduct.

Analysis prepared by the University of Wisconsin System Administration.

ANALYSIS

Statutory Authority and Rule Overview

The University of Wisconsin System (UW System) Administration seeks to modify Board of Regents (Board) administrative rules, known as Chapter UWS 17, Nonacademic Student Misconduct.

The Board has statutory authority to propose revisions to Chapter UWS 17 under s. 36.35, Wis. Stats., which reads as follows: “The board shall promulgate rules under ch. 227 governing student conduct and procedures for the administration of violations.”

On June 19, 2014, the Board submitted a scope statement to the Governor’s Office for authority to propose legislative changes pursuant to the Wisconsin Legislative Rulemaking Process for Wisconsin Administrative Code, Chapters 4, 7, 11 and 17. The purpose of this request was to initiate changes to Chapter UWS 17 to comply with federal guidance issued by the U.S. Department of Education Office for Civil Rights as it relates to Title IX of the Education Amendments of 1972 (“Title IX”) (guidance issued by the U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, April, 2011). The proposed revisions are also intended to address the regulatory amendments under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Campus Sexual Violence Elimination Act (“Campus SaVE Act”).

On July 7, 2014 and pursuant to s. 227.135, Wis. Stats., Governor Scott Walker approved the scope statement. The scope statement was submitted to the Legislative Reference Bureau for publication on July 31, 2014, and thereby published in Register No. 703, pursuant to s. 227.135(3), Wis. Stats.

On April 10, 2015, the Board of Regents adopted Resolution I.1.b.(3), approving the Revisions to Administrative Code, Ch. UWS 17, Nonacademic Student Misconduct.

Economic Impact

The Board of Regents hereby determines that the proposed rules shall have minimal to no economic impact locally or statewide. A fourteen (14) day comment period was provided to the general public in order to solicit information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule in order to determine what, if any, economic impact the rule will have locally or statewide.

Fiscal Estimate

The Board of Regents hereby determines that the proposed rules shall have minimal to no fiscal impact or effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. There is minimal to no anticipated fiscal effect on the private sector and no anticipated costs incurred by the private sector in complying with the rules. This fiscal estimate determination has been conducted in accordance with s. 224.14(4), Wis. Stats.

14 day Comment Period

The “Notice of Public Comment Period on Economic Impact and Fiscal Estimate” for Chapter UWS 17 was available on the UW System homepage: <https://www.wisconsin.edu/> (Look under “News, Events, & Announcements”) and the Board of Regents page: <https://www.wisconsin.edu/regents/>. The notice remained open from April 17, 2015 to May 1, 2015. No comments were received during this period.

Agency Contact Person

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TEXT OF RULE

Section 1. UWS 17.02 (1) is created to read:

- (1) “Complainant” means any individual who is allegedly harmed by a respondent as a result of sexual harassment, sexual assault, dating violence, and domestic violence or stalking, as defined in s. UWS 17.09.

Section 2. UWS 17.02 (1) is renumbered UWS 17.02 (2).

Section 3. UWS 17.02 (2) is renumbered UWS 17.02 (3).

Section 4. UWS 17.02 (3) is renumbered UWS 17.02 (4).

Section 5. UWS 17.02 (4) is renumbered UWS 17.02 (5).

Section 6. UWS 17.02 (5) is renumbered UWS 17.02 (6).

Section 7. UWS 17.02 (6) is renumbered UWS 17.02 (7).

Section 8. UWS 17.02 (7) is renumbered UWS 17.02 (8).

Section 9. UWS 17.02 (8) is renumbered UWS 17.02 (9).

Section 10. UWS 17.02 (9) is renumbered UWS 17.02 (10).

Section 11. UWS 17.02 (10) is renumbered UWS 17.02 (11).

Section 12. UWS 17.02 (11) is renumbered UWS 17.02 (12).

Section 13. UWS 17.02 (12) is renumbered UWS 17.02 (13).

Section 14. UWS 17.02 (13) is renumbered UWS 17.02 (14).

Section 15. UWS 17.02 (14) is renumbered UWS 17.02 (16).

Section 16. UWS 17.02 (15) is created to read:

- (15) “Respondent” means any student who is accused of violating any provision of this chapter, and was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred.

Section 17. UWS 17.02 (15) is renumbered UWS 17.02 (17).

Section 18. UWS 17.02 (16) is renumbered UWS 17.02 (18).

Section 19. UWS 17.02 (17) is renumbered UWS 17.02 (19).

Section 20. UWS 17.05 is amended to read:

UWS 17.05 Designation of investigating officer. The chief administrative officer of each institution shall designate an investigating officer or officers for allegations of student nonacademic misconduct. The investigating officer shall investigate student nonacademic misconduct and initiate procedures for nonacademic misconduct under s. UWS 17.11. For allegations involving sexual assault, domestic violence, dating violence, stalking and/or sexual harassment, the chief administrative officer shall involve the Title IX Coordinator, or designee, in accordance with applicable institutional policies.

Section 21. UWS 17.09 (17) is created to read:

(17) DATING VIOLENCE. Violence committed by a student in a “dating relationship” as defined in s. 813.12(1)(ag) Stats.

Section 22. UWS 17.09 (17) is created to read:

(18) DOMESTIC VIOLENCE. Conduct defined as “domestic abuse” in ss. 813.12(1)(am) and 968.075 Stats.

Section 23. UWS 17.09 (17) is created to read:

(19) SEXUAL HARASSMENT. Conduct defined in s. 111.32(13) Stats or as defined in Board of Regent Policy that addresses sexual harassment.

Section 24. UWS 17.11 (2) is amended to read:

(2) CONFERENCE WITH ~~STUDENT-RESPONDENT~~. When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly contact the student respondent in person, by telephone, or by electronic mail to offer to discuss the allegation of matter with student. ~~The purpose of this discussion is to permit the investigating officer to review with the student the basis for his or her belief that the student engaged in nonacademic misconduct, and to afford the student-respondent an opportunity to respond. If the student-respondent fails to does not respond to the investigating officer, the investigating officer’s to discuss the matter may proceed to make a determination on the basis of the available information. A complainant shall have all the rights provided to the respondent in this subsection.~~

Section 25. UWS 17.11 (3) is amended to read:

(3) DETERMINATION BY THE INVESTIGATING OFFICER THAT NO DISCIPLINARY SANCTION IS WARRANTED. If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did not in fact occur, or that no disciplinary sanction is warranted under the circumstances, the matter will be considered resolved without the necessity for further action. The investigating officer shall simultaneously notify the respondent and the complainant of

this outcome and offer to discuss it separately with either one. If the investigating officer determines that nonacademic misconduct did not occur or that no disciplinary sanction is warranted, the complainant may appeal this decision in accordance with s. UWS 17.13.

Section 26. UWS 17.11 (4)(a)2. and 4. are amended to read:

2. A description of all information available to the university regarding the alleged misconduct. Such information shall be available to the ~~student-respondent~~ and, upon request to the complainant, except as may be precluded by applicable state or federal law.
4. Notice of the ~~student-respondent~~'s right to a hearing.

Section 27. UWS 17.11 (4)(b) is amended to read:

- (b) The written report shall be delivered simultaneously to the ~~student-respondent~~ and complainant, excluding any information that may be precluded by applicable state or federal law.

Section 28. UWS 17.11 (4)(c) is amended to read:

- (c) A ~~student-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.

Section 29. UWS 17.11 (4)(c)1. and 2. is amended to read:

1. Where the disciplinary sanction sought is one of those listed in s. UWS 17.10 (1) (a) to (g), and if the ~~student-respondent~~ desires a hearing, the ~~student-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 ~~student-respondent~~ does not request a hearing within this period, the determination of nonacademic misconduct shall be regarded as final, and the disciplinary sanction sought shall be imposed.
2. Where the disciplinary sanction sought is one of those listed in s. UWS 17.10 (1) (h) to (j), the investigating officer shall forward a copy of the written report under par. (b) to the student affairs officer. The student affairs officer shall, upon receipt of the written report, proceed under s. UWS 17.12 to schedule a hearing on the matter. A hearing shall be conducted unless the ~~student-respondent~~ waives, in writing, the right to such a hearing.

Section 30. UWS 17.12 (1), (2), and (3) are amended to read:

- (1) A ~~student-respondent~~ who requests a hearing, or for whom a hearing is scheduled under s. UWS 17.11 (4) (c) 2., shall have the right to decide whether the matter will be

heard by a hearing examiner or a hearing committee. In cases of sexual assault, dating violence, domestic violence, stalking or sexual harassment the university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

- (2) If a ~~student~~ 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 ~~student~~ 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 ~~student~~ respondent and, upon request the complainant, with access to or copies of the investigating officer's explanation, together with any other materials provided to the hearing examiner or committee by the investigating officer, including any additional available information of the type described in s. UWS 17.11 (4) (a) 2.

Section 31. UWS 17.12 (4)(b) is amended to read:

- (b) The ~~student~~ respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on his or her own behalf, and the right to be accompanied by an advisor of the ~~student~~ respondent's choice. The advisor may be a lawyer. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (a) to (h), the advisor may counsel the ~~student~~ respondent but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the ~~student~~ respondent except at the discretion of the hearing examiner or committee. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (i) or (j), or where the ~~student~~ 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 ~~student~~ respondent. In accordance with the educational purposes of the hearing, the ~~student~~ respondent is expected to respond on his or her own behalf to questions asked of him or her during the hearing. The complainant shall have all the rights provided to the respondent in this subsection.

Section 32. UWS 17.12(4)(c)3. is amended to read:

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 ~~student~~ is complainant and respondent are allowed to effectively question the witness.

Section 33. UWS 17.12 (4)(d) is amended to read:

- (d) The hearing examiner or committee shall make a record of the hearing. The record shall include a verbatim record of the testimony, which may be a sound recording, and a file of the exhibits offered at the hearing. The respondent and the complainant may access the record, upon request, except as may be precluded by applicable state or federal law.

Section 34. UWS 17.12 (4)(f)3. is amended to read:

3. A preponderance of the evidence, regardless of the sanction to be imposed, in all cases of involving sexual assault, dating violence, domestic violence, stalking and sexual harassment.

Section 35. UWS 17.12(4)(h), (i), (j), and (k) are amended to read:

- (h) The hearing shall be conducted by the hearing examiner or committee, and the university's case against the ~~student-respondent~~ shall be presented by the investigating officer or his or her designee.
- (i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered simultaneously to the ~~student-respondent~~ and the complainant, excluding information that may be precluded by state or federal law. The decision shall become final within 14 days of the date on the written decision, unless an appeal is taken under s. UWS 17.13.
- (j) If a party fails to appear at a scheduled hearing and to proceed, the hearing examiner or committee may either dismiss the case or, based upon the information provided, ~~find that the student committed the misconduct alleged~~ issue a decision.
- (k) Disciplinary hearings are subject to the Wisconsin open meetings law and may be closed if the ~~student-respondent whose case is being heard~~ or complainant requests a closed hearing or if the hearing examiner or committee determines that it is necessary to hold a closed hearing, as permitted under the Wisconsin open meetings law. Deliberations of the committee shall be held in closed session, in accordance with s. 19.85, Stats. As such, proper notice and other applicable rules shall be followed.

Section 36. UWS 17.13(1) is amended to read:

- (1) Where the sanction prescribed by the hearing examiner or committee is one of those listed in s. UWS 17.10 (1) (h) to (j), the ~~student-respondent~~ may appeal in writing to the chief administrative officer within 14 days of the date of the written decision to review the decision of the hearing examiner or committee, based upon the record. ~~In such a case, the chief administrative officer has 30 days from receipt of the student's appeal to respond and shall sustain the decision of the nonacademic misconduct hearing examiner or committee unless the chief administrative officer finds any of the following:~~

Section 37. UWS 17.13(1) (a), (b), and (c) are repealed.

Section 38. UWS 17.13(2) is repealed.

Section 39. UWS 17.13(2) (intro.), (a), and (b) are created to read:

- (2) In cases of sexual assault, dating violence, domestic violence, stalking or sexual harassment, the following appeal rights shall be provided:
- (a) The complainant may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the investigating officer pursuant to s. UWS 17.11(3), the hearing committee, or examiner pursuant to s. UWS 17.12(i). The appeal shall be based upon the record.
- (b) The respondent may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the hearing committee, or examiner pursuant to s. UWS 17.12(i). The appeal shall be based upon the record.

Section 40. UWS 17.13(3) (intro.), (a), (b), and (c) are created to read:

- (3) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:
- (a) The information in the record does not support the findings or decision.
- (b) Appropriate procedures were not followed which resulted in material prejudice to the respondent or complainant.
- (c) The decision was based on factors proscribed by state or federal law.

Section 41. UWS 17.13(4) is created to read:

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

Section 42. UWS 17.14 is amended to read:

UWS 17.14 Discretionary appeal to the board of regents. Institutional decisions under ss. UWS 17.11 to 17.13 shall be final, except that the board of regents may, at its

discretion, grant a review upon the record, upon written request submitted by any party within 14 days of the final institutional decision.

Section 43. UWS 17.15 is amended to read:

UWS 17.15 Settlement. The procedures set forth in this chapter allow the university and a ~~student-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 ~~student-respondent~~ and the investigating officer or student affairs officer. The case is concluded when a copy of the signed agreement is delivered to the ~~student-respondent~~. The investigating officer shall confer with the complainant regarding the proposed settlement and provide notice of the outcome.

Section 44. UWS 17.16 is amended to read:

UWS 17.16 Effect of discipline within the institution. A ~~student-respondent~~ who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS 17.10 (1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11, shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

Section 45. UWS 17.17 (2), (3), (4), and (5) are amended to read:

- (2) An ~~student-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 ~~student-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 ~~person-individual~~ who is in a state of suspension or expulsion from the university under this chapter, or who leaves or withdraws from the university while under nonacademic misconduct charges under this chapter, may not be present on any campus without the written consent of the chief administrative officer of that campus.
- (5) Upon completion of a suspension period, an ~~student-individual~~ who is academically eligible may re-enroll in the institution which suspended him or her, provided all conditions from previous disciplinary sanctions have been met.

Section 46. UWS 17.18 is amended to read:

UWS 17.18 Petition for restoration of rights after suspension or expulsion. A student respondent who has been suspended may petition to have his or her student status, rights, and privileges restored before the suspension has expired by its own terms under s. UWS 17.17 (2). A student-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 student-respondent was suspended or expelled or of a different University of Wisconsin institution to which the student-respondent seeks admission. The chief administrative officer shall make the readmission decision.

Section 47. UWS 17.19(1), (2)(intro.), (a), (c)(intro), and 1. are amended to read:

- (1) The chief administrative officer may impose an emergency suspension on a student 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 student-respondent when all of the following conditions are met:
 - (a) The investigating officer has made a reasonable attempt to offer the student-respondent the opportunity for discussion, either in person or by telephone.
 - (c) The chief administrative officer concludes, based on the available information, that the misconduct occurred and that the student-respondent's continued presence on campus meets one or more of the following conditions:
 1. Would constitute a potential for serious harm to the student-respondent.

Section 48. UWS 17.19 (3), (4), and (5) are amended to read:

- (3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), he or she shall promptly have written notification of the emergency suspension delivered to the student-respondent. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the student-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 student-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 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 ~~student~~respondent agrees to a longer period.

Section 49. EFFECTIVE DATE:

The rules adopted in this order shall take effect on the first day to the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2(intro.)), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____
(Member of the Board or Secretary)
(board or department name)