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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Colleges and Universities...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (November 2012)

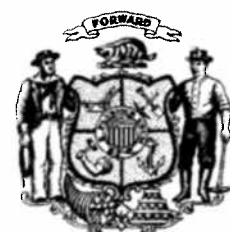
May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

Brad Hub
Committee Clerk



WISCONSIN STATE LEGISLATURE



February 20, 2006

TO Faculty Senate Chairs/Representatives
Academic Staff Chairs/Representatives

FROM: Regent Mike Spector, Board of Regents

At its regular February, 2006 meeting, the University of Wisconsin System Board of Regents authorized me, as Chair of its Special Committee on Faculty and Academic Staff Disciplinary Process, to request your written comments on the enclosed proposed "draft" of a new UWS Chapter 7, Wisconsin Administrative Code. (A brief summary of the proposal is also enclosed for your convenience.)

The Board recognizes that its consideration of a new rule regarding a faculty and academic staff disciplinary process results from a few egregious cases of misconduct that do not in any way represent the actions of our extremely high quality faculty and academic staff. At the same time, the Board believes these cases necessitate consideration of rule changes to ensure that any future similar cases, no matter how unlikely, are resolved in a manner consistent with employee due process and academic freedom while protecting the legitimate interest of students, other faculty and staff and the UW System.

We encourage detailed responses that include, among other things, statements of specific areas of concern and, if applicable, proposed new or revised wording to address those concerns.

Thank you in advance for your shared governance efforts and for transmitting⁴ your governance body's resolution containing your input to Senior Vice President Cora Marrett and your chancellor no later than Thursday, April 6, 2006. Our committee intends to review all comments in mid-April and to make a final recommendation to the full Board prior to its May meeting.

If you have any questions, please contact Ron Singer at 608-263-3680, rsinger@uwsa.edu.

cc w/encl.: Board of Regents
Chancellors
Provosts
President Reilly
Cabinet
Committee Regarding Faculty/Academic Staff Disciplinary Process

DRAFT--2/7/06

Proposed Chapter UWS 7, Wisconsin Administrative Code
Procedures for Dismissal of Faculty in Special Cases

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

UWS 7.02 Serious criminal misconduct. (1) In this chapter, "Serious Criminal Misconduct" means engaging in behavior that constitutes the commission of a felony, and that:

- (a) Clearly poses a substantial risk to the safety of members of the university community or others; or
- (b) Seriously impairs the public trust in the university and the university's ability to fulfill its teaching, research or public service missions; or
- (c) Seriously impairs:
 - 1. The faculty member's fitness or ability to fulfill the duties of his or her position; or
 - 2. The efficiency of the colleagues and students with whom he or she works.

(2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute Serious Criminal Misconduct.

(3) Except as otherwise expressly provided, a faculty member who has engaged in behavior that constitutes Serious Criminal Misconduct shall be subject to the procedures set forth in ss. UWS 7.03-7.06.

UWS 7.03 Dismissal for cause. (1) Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the

end of his or her term of appointment only by the board and only for just cause and only after due notice and hearing.

(2) Just cause for dismissal includes, but is not limited to, Serious Criminal Misconduct, as defined in s. UWS 7.02.

UWS 7.04 Reporting responsibility. Any faculty member who engages in Serious Criminal Misconduct shall immediately report that fact to the provost.

UWS 7.05 Expedited process. (1) Whenever the provost of an institution within the university of Wisconsin system receives a report under s. UWS 7.04 or other credible information that a faculty member has engaged in Serious Criminal Misconduct, or where the provost has determined to impose a suspension without pay pending the final decision as to dismissal under s. UWS 7.06, the provost shall:

(a) Within three working days of receipt of the report or information, inform the faculty member of its receipt and, after consultation with appropriate institutional governance representatives, appoint an investigator to investigate the report or information;

(b) Upon appointing an investigator, afford the faculty member three working days in which to request that the investigator be disqualified on grounds of lack of impartiality. In the event that the provost determines that a request for disqualification should be granted, the provost shall, within two working days of the determination, appoint a different investigator.

(2) The investigation shall be completed and a report filed with the provost not later than ten working days following the time allowed for the faculty member to request an investigator's disqualification, or the naming of a different investigator, whichever is later.

(3) Within three working days of receipt of the investigator's report, the provost shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the faculty member pursuant to this chapter, to seek dismissal of the faculty member pursuant to ch. UWS 4, to seek an alternative disciplinary sanction, or to discontinue the proceedings.

(a) If the provost decides to seek dismissal of the faculty member pursuant to this chapter, the provost shall file charges within two working days of reaching the decision.

(b) If the provost decides to seek dismissal of the faculty member pursuant to ch. UWS 4, the provost shall file charges and proceed in accordance with the provisions of that chapter and implementing institutional policies.

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

(4) If charges seeking dismissal are filed under par. (3)(a), the faculty member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 4.03. The hearing shall provide the procedural guarantees enumerated under s. UWS 4.05-4.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.

(5) Upon receipt of the findings and recommendation of the committee under par. (4), the chancellor shall, within three working days, prepare a written recommendation on the matter.

(a) If the chancellor's recommendation is for dismissal, the recommendation shall be transmitted to the board of regents for review.

(b) Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the board at its option grants a review on the record at the request of the faculty member.

(6) Upon receipt of the chancellor's recommendation, the full board shall review the record before the institutional hearing committee, and may offer an opportunity for filing exceptions to the recommendation, or for oral argument. The full board shall issue its decision on the matter within 15 working days of receipt of the chancellor's recommendation.

(7) If a faculty member whose dismissal is sought under par. (3)(a) does not request a hearing, the board shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.

(8) The burden of proof shall be a preponderance of the evidence.

(9) (a) The time limits set forth in this section may be enlarged if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

(b) Enlargements of time under this section may be granted by the chair of the faculty hearing body, subject to the approval of the provost.

UWS 7.06 Temporary suspension from duties. (1) The provost, after consultation with appropriate faculty governance representatives, may suspend a faculty member from duties without pay pending the final decision as to his or her dismissal where:

(a) The faculty member has been charged with a felony and the provost finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.01(a)-(c) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or

(b) The faculty member is unable to report for work due to incarceration, conditions of bail or similar cause; or

(c) The faculty member has been convicted of serious criminal misconduct.

(2) Before imposing a suspension without pay, the provost shall evaluate the available information to determine whether the conditions specified in par. (1) are present. If the provost finds that the conditions in par. (1) are present, he or she shall immediately notify the faculty member, in writing, of the intent to impose a suspension without pay, and shall, within two working days, provide the faculty member with an opportunity to be heard with regard to the matter. The faculty member may be represented by counsel or another at this meeting.

(3) If, after affording the faculty member the opportunity to be heard, the provost determines to suspend without pay, the provost shall inform the faculty member of the suspension, in writing. The provost's decision to suspend without pay under this section shall be final, except that:

(a) If the chancellor later determines that the faculty member should not be terminated, the chancellor may discontinue the proceedings, or may recommend a lesser penalty to the board, or may order the payment of back pay, as appropriate;

(b) If the board later determines that the faculty member should not be terminated, the board may order a lesser penalty and/or the payment of back pay.

(4) If, after affording the faculty member the opportunity to be heard, the provost determines that the conditions in par. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 4.09 shall apply.

UWS 7.07 Initial Applicability. The provisions of this chapter shall first be applicable to conduct occurring on or after the effective date.

Summary of Recommended Changes Regarding the Disciplinary
Process for Serious Criminal Misconduct

Last fall, Regent President David G. Walsh appointed a committee to review the UW System disciplinary processes applicable to faculty and academic staff members in situations involving charges of criminal misconduct. Several recent instances in which faculty members were convicted of felonies prompted concerns that the university's internal disciplinary processes were not effective in resolving related employment issues involved in these cases. Of particular concern were the length of time required to complete the internal process; the continuation of substantial salary payments to those who could not, because of incarceration, or should not, be performing their duties; and the undermining of public confidence in the university's ability to fulfill its teaching, service and research missions. President Walsh created the Committee on Faculty and Academic Staff Disciplinary Process (Committee) to consider these and other problems, and to recommend any necessary rule or policy changes to the Board of Regents, subject to shared governance review.

The Committee has now met five times, and has agreed upon the attached draft of a new, expedited process for the disposition of disciplinary matters involving serious criminal misconduct. The draft creates a new chapter of the Board's administrative rules to deal specifically with circumstances where faculty members have engaged in serious criminal misconduct. While the language as drafted applies to faculty, it is anticipated that parallel provisions would be established to govern the indefinite academic staff, a group of employees which enjoys a status and procedural protections similar to faculty tenure. The new rules would make several significant changes from current procedures:

(1) *Definition of serious criminal misconduct.* At the heart of the Committee's proposal is the definition of "serious criminal misconduct." This is the term that describes the kind of egregious misbehavior warranting initiation of the expedited dismissal process, possible imposition of suspension without pay, and constituting just cause for dismissal. As defined, "serious criminal misconduct" has two essential elements: (a) conduct that constitutes the commission of a felony *and* (b) either poses a danger to public safety; or seriously impairs the public trust in the university and the university's ability to fulfill its mission; or seriously impairs the faculty member's fitness or ability to fulfill his or her duties, or the efficiency of the colleagues or students with whom he or she works. By requiring both elements, the definition ensures that there is a nexus between the felonious activity and its impact on the university.

(2) *Expedited time limits.* The time periods for conducting investigations, filing charges for dismissal, conducting hearings at the campus level and moving matters forward to the Board for review and final decision on termination have all

been shortened, with the goal of establishing a process that could be completed within approximately 60 days. Enlargement of the time periods as set forth in the new language would occur only if necessary to obtain critical evidence or to meet due process requirements, and only with the approval of the provost. The creation of this expedited process will allow the university to deal promptly with the most serious instances of misconduct.

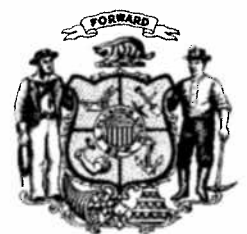
(3) *Suspension without pay.* The new language would also clearly provide for suspension without pay during the pendency of the internal process where: (a) A faculty member has been charged with serious criminal misconduct, and the provost has determined that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; (b) A faculty member is unable to report for work due to incarceration, condition of bail or similar cause; or (c) A faculty member has been convicted of serious criminal misconduct.

In developing these proposals, the Committee has been mindful of a number of related issues, including the rights of employee due process secured by the Fourteenth Amendment to the United States Constitution; state law prohibiting discrimination based on a conviction record, unless it can be shown that the conviction is related to the position in question; and the existing administrative rules and institutional policies and procedures governing the employment of faculty and academic staff. The draft language attempts to achieve a balance between and among the sensitive and important interests at stake. The proposal is now at a point where initiation of the university's shared governance review process is appropriate.

cc: Regents
President Reilly
Chancellors
Cabinet
Committee Members



WISCONSIN STATE LEGISLATURE



WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

*Every kid
deserves a
Great School!*

Testimony in opposition to AB 1147

Before the Assembly Colleges and Universities Committee
Rep. Kreibich, Chair
April 26, 2006

The Wisconsin Education Association Council (WEAC) opposes Assembly Bill 1147. If enacted, AB 1147 would allow the University of Wisconsin, technical college districts and the WTCS State Board to refuse to hire or terminate from employment any individual convicted of a felony and not subsequently pardoned.

Under Wisconsin's Fair Employment Act, public or private sector employers may refuse to hire or terminate individuals based on conviction record if there is a relationship between the circumstances of the offense and the circumstances of the job.

In 2005, the Equal Rights Division of the Department of Workforce Development found that probable cause for further investigation existed in only 36 of the 284 complaints alleging discrimination based on conviction record. Of these, only three cases resulted in a finding of that discrimination based on conviction record actually occurred. Similar patterns hold for previous years (see table.)

Cases Involving Discrimination Based on Conviction Records

Year	Conviction Record Complaints	Probable Cause	Discrimination Findings
2005	284	36	3
2004	282	35	2
2003	265	42	2

Source: Equal Rights Division

These data indicate that Wisconsin's Fair Employment Act has been interpreted broadly, giving employers like the UW, technical college districts and the WTCS State Board wide latitude in determining whether there is a substantial relationship between an individual's crime and the circumstances of the job. In other words, current law – properly interpreted – gives the UW, technical college districts and the WTCS State Board the ability to refuse to hire convicted felons (and those convicted of lesser crimes) that may pose a threat to the safety of students or to the operation of an institution.

(OVER)

Stan Johnson, President
Dan Burkhalter, Executive Director



In addition, current law affords those convicted of felonies the ability to rehabilitate and engage in gainful employment. Certainly, it is legitimate to deny felons convicted of certain crimes employment in a school or college setting – and current law allows the UW, technical college districts and the WTCS State Board the ability to make that determination. However, committing a felony unrelated to one's employment should not necessarily disqualify individuals from serving in jobs they are otherwise qualified.

AB 1147 would allow the UW and technical colleges to establish sweeping bars against the employment of felons. In fact, one could argue that the mere enactment of the legislation communicates an expectation that such a prohibition be established. To create such a bar would be to deny those convicted of felonies – no matter how long ago – the ability to work at jobs that are both of a high quality and that bear no relationship to the circumstances of their crime.

Governor Jim Doyle's July 24, 2003 veto message from a similar bill (Assembly Bill 41) states it best:

It is well established that employment is a key crime prevention tool. Ex-offenders are much less likely to commit a new crime if they have steady employments. This bill, if it were to become law, would increase barriers for ex-offenders to secure and maintain employment and, as a result, has the very real potential to increase crime and jeopardize public safety.

AB 1147 also could potentially place a heavy administrative and financial burden on the UW, technical college districts and the WTCS State Board. The enactment of the bill would send an implicit message that the Legislature expects the UW, technical college districts, and WTCS State Board to engage in employee background checks. The technical colleges employ a high number of part-time faculty with high rates of turn over. For example, the state's 16 technical college districts hired nearly 6,275 employees in the fiscal year 2004-05. Checking the background of each new hire has the potential to be both time consuming and costly.

For these reasons, WEAC opposes AB 1147.

For more information please contact:

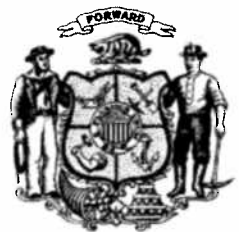
Andrew Lyons, WEAC WTCS consultant, 608-298-2365

Thank you.

*Every kid
deserves a
Great School!*



WISCONSIN STATE LEGISLATURE





PROFS INC

PUBLIC REPRESENTATION ORGANIZATION OF THE FACULTY SENATE
UNIVERSITY OF WISCONSIN-MADISON

258 Bascom Hall
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Madison, WI 53706
608/263-9273

PROFS, Inc. Testimony to the Assembly Colleges and Universities Committee in Opposition to Assembly Bill 1147

May 2, 2006

PROFS, Inc. is the Public Representation Organization of the (UW-Madison) Faculty Senate. PROFS represents the interests of the UW-Madison faculty to the Governor, the Legislature, the U.S. Congress, and the general public.

In the debate over what to do with faculty members accused of or convicted of serious crimes, the UW-Madison faculty are committed not just to protecting faculty rights, but also to ensuring a safe teaching and learning environment for all who are part of our great university. We welcome the opportunity to work with legislators and regents to reach these important goals.

PROFS opposes AB 1147 because we believe it is an inadequate, misguided attempt to deal with this situation. The bill would remove an important job protection that is provided to other employees in the state -- the requirement that employers not discriminate on the basis of a conviction record that does not substantially relate to the circumstances of the job.

All this would do is allow the Board of Regents to discriminate against employees or potential employees who may have been convicted of crimes that have nothing to do with the jobs they hold or the jobs for which they are being considered. It would not deal in a timely fashion with the very real campus safety and discipline issues that arise from time to time.

A far more appropriate response would be the creation of stronger rules at the university level to deal with situations where there is potentially serious misconduct. The Board of Regents has proposed UWS 7, and the UW-Madison faculty have spent considerable time in recent months attempting to forge a compromise that would allow for quick and decisive action while protecting faculty governance of the university.

Just yesterday afternoon, the UW-Madison Faculty Senate adopted proposed revisions to proposed UWS 7. Among other things, the Faculty Senate proposal would allow chancellors, working with faculty committees, to deal aggressively and decisively with situations where "a faculty member has been charged with, has pled guilty or no contest to, or has been convicted of those felonies in state or federal court that are based on conduct involving:

- (a) causing serious physical injury to another person
- (b) creating a serious danger to the personal safety of another person
- (c) sexual assault
- (d) theft or criminal damage to property
- (e) stalking or harassment"

The proposal would create a "Rapid Response" provision that would allow the chancellor and faculty to act immediately to restrict or even relieve a faculty member of all of his or her duties in cases where the safety of the university could be at risk. In these cases, the faculty member would continue to be paid, but the suspension could last no longer than 60 days.

The proposal would then allow for an expedited process for suspensions without pay. And it would implement yet another expedited process for dismissing faculty members once they are convicted, plead guilty or no contest to one of the felonies listed.

The provisions contained in the Faculty Senate resolution add up to a much more comprehensive and effective approach to dealing with misconduct than the provisions in AB 1147. For this reason, PROFS urges you to vote against AB 1147 if it is brought up in executive session.

Thank you for your consideration of our views.