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☞ Details: Informational Hearing: Employment Practices, University of Wisconsin System

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

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) (October 2012)

American Association of University Professors

Recommended Institutional Regulations on Academic Freedom and Tenure

*The Recommended Institutional Regulations on Academic Freedom and Tenure set forth, in language suitable for use by an institution of higher education, rules which derive from the chief provisions and interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure and of the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings. The Recommended Institutional Regulations were first formulated by the *Committee on Academic Freedom and Tenure (Committee A)* in 1957. A revised and expanded text, approved by Committee A in 1968, reflected the development of Association standards and procedures. Texts with further revisions were approved by Committee A in 1972, in 1976, in 1982, in 1990, and in 1999.*

The current text is based upon the Association's continuing experience in evaluating regulations actually in force at particular institutions. It is also based upon further definition of the standards and procedures of the Association over the years. The Association will be glad to assist in interpretation of the regulations or to consult about their incorporation in, or adaptation to, the rules of a particular college or university.

FOREWORD

These regulations are designed to enable the [named institution] to protect academic freedom and tenure and to ensure academic due process. The principles implicit in these regulations are for the benefit of all who are involved with or are affected by the policies and programs of the institution. A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

1. STATEMENT OF TERMS OF APPOINTMENT

(a) The terms and conditions of every appointment to the faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the faculty member. Any subsequent extensions or modifications of an appointment, and any special understandings, or any notices incumbent upon either party to provide, will be stated or confirmed in writing and a copy will be given to the faculty member.

(b) With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired faculty members on special conditions, all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.

(c) Except for faculty members who have tenure status, every person with a teaching or research appointment of any kind will be informed each year in writing of the renewal of the appointment and of all matters relative to eligibility for the acquisition of tenure.

2. PROBATIONARY APPOINTMENTS

(a) Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full-time service prior to the acquisition of continuous tenure will not exceed ____ years,¹ including all previous full-time service with the rank of instructor or higher in other institutions of higher learning [*except* that the probationary period may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years; the terms of such extension will be stated in writing at the time of initial appointment].² Scholarly leave of absence for one year or less will count as part of the probationary period as if it were prior service at another institution, unless the individual and the institution agree in writing to an exception to this provision at the time the leave is granted.

(b) The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. Any special standards adopted by the faculty member's department or school will also be transmitted. The faculty member will be advised of the time when decisions affecting renewal or tenure are ordinarily made, and will be given the opportunity to submit material believed to be helpful to an adequate consideration of the faculty member's circumstances.

(c) Regardless of the stated term or other provisions of any appointments, written notice that a probationary appointment is not to be renewed will be given to the faculty member in advance of the expiration of the appointment, as follows: (1) not later than March 1 of the first academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (2) not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (3) at least twelve months before the expiration of an appointment after two or more years of service at the institution. The institution will normally notify faculty members of the terms and conditions of their renewals by March 15, but in no case will such information be given later than ____.³

(d) When a faculty recommendation or a decision not to renew an appointment has first been reached, the faculty member involved will be informed of that recommendation or decision in

writing by the body or individual making the initial recommendation or decision; the faculty member will be advised upon request of the reasons which contributed to that decision. The faculty member may request a reconsideration by the recommending or deciding body.

(e) If the faculty member so requests, the reasons given in explanation of the nonrenewal will be confirmed in writing.

(f) Insofar as the faculty member alleges that the decision against renewal by the appropriate faculty body was based on inadequate consideration, the committee⁴ which reviews the faculty member's allegation will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution. The review committee will not substitute its judgment on the merits for that of the faculty body. If this committee, which can be the grievance committee noted in Regulation 15, is to be an elected faculty body. Similarly, the members of the committees noted in Regulations 4(c)(2), 4(d)(3), and 10 are to be elected. A committee of faculty members appointed by an appropriate elected faculty body can substitute for a committee that is elected directly. If the review committee believes that adequate consideration was not given to the faculty member's qualifications, it will request reconsideration by the faculty body, indicating the respects in which it believes the consideration may have been inadequate. It will provide copies of its findings to the faculty member, the faculty body, and the president or other appropriate administrative officer.

3. TERMINATION OF APPOINTMENT BY FACULTY MEMBERS

Faculty members may terminate their appointments effective at the end of an academic year, provided that they give notice in writing at the earliest possible opportunity, but not later than May 15, or thirty days after receiving notification of the terms of appointment for the coming year, whichever date occurs later. Faculty members may properly request a waiver of this requirement of notice in case of hardship or in a situation where they would otherwise be denied substantial professional advancement or other opportunity.

4. TERMINATION OF APPOINTMENTS BY THE INSTITUTION

(a) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.

(b) If termination takes the form of a dismissal for cause, it will be pursuant to the procedures specified in Regulation 5.

Financial Exigency

(c) (1) Termination of an appointment with continuous tenure, or of a probationary or special

appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means.

[NOTE: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent,⁵ and that all feasible alternatives to termination of appointments have been pursued.

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.⁶ The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedure.]

(2) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

- (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
- (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.

(iii) Whether the criteria are being properly applied in the individual case.

(3) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(4) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(5) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(6) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.

Discontinuance of Program or Department Not Mandated by Financial Exigency⁷

(d) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of a program or department of instruction. The following standards and procedures will apply.

(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[NOTE: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

(2) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position

would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

[NOTE: When an institution proposes to discontinue a program or department of instruction, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(3) A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4(d). In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

Termination Because of Physical or Mental Disability

(e) Termination of an appointment with tenure, or of a probationary or special appointment before the end of the period of appointment, because of physical or mental disability, will be based upon clear and convincing medical evidence that the faculty member, even with reasonable accommodation, is no longer able to perform the essential duties of the position. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Committee on Academic Freedom and Tenure [or whatever title it may have] before a final decision is made by the governing board on the recommendation of the administration. The faculty member will be given severance salary not less than as prescribed in Regulation 8.

Review

(f) In cases of termination of appointment, the governing board will be available for ultimate review.

5. DISMISSAL PROCEDURES

(a) Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

(b) Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee] which may, failing to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity by the president or the president's delegate.

(c) A dismissal, as defined in Regulation 5(a), will be preceded by a statement of reasons, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee [insert name of committee].^[8] Members deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause.^[9]

(1) Pending a final decision by the hearing committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension which is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of the suspension.

(2) The hearing committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious.

(3) Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not

support a finding of adequate cause, the hearing tribunal will evaluate all available evidence and rest its recommendation upon the evidence in the record.

(4) The committee, in consultation with the president and the faculty member, will exercise its judgment as to whether the hearing should be public or private.

(5) During the proceedings the faculty member will be permitted to have an academic advisor and counsel of the faculty member's choice.

(6) At the request of either party or the hearing committee, a representative of a responsible educational association will be permitted to attend the proceedings as an observer.

(7) A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.

(8) The burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole.

(9) The hearing committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(10) The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the hearing committee in securing witnesses and making available documentary and other evidence.

(11) The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories.

(12) In the hearing of charges of incompetence, the testimony will include that of qualified faculty members from this or other institutions of higher education.

(13) The hearing committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(14) The findings of fact and the decision will be based solely on the hearing record.

(15) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the governing board of the institution. The president and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.

(16) If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president. If the president rejects the report, the president will state the reasons for doing so, in writing, to the hearing committee and to the faculty member, and provide an opportunity for response before transmitting the case to the governing board. If the hearing committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it will so recommend, with supporting reasons.

6. ACTION BY THE GOVERNING BOARD

If dismissal or other severe sanction is recommended, the president will, on request of the faculty member, transmit to the governing board the record of the case. The governing board's review will be based on the record of the committee hearing, and it will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the hearing committee will either be sustained or the proceeding returned to the committee with specific objections. The committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The governing board will make a final decision only after study of the committee's reconsideration.

7. PROCEDURES FOR IMPOSITION OF SANCTIONS OTHER THAN DISMISSAL

(a) If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 will govern such a proceeding.

(b) If the administration believes that the conduct of a faculty member justifies imposition

of a minor sanction, such as a reprimand, it will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a major sanction has been incorrectly imposed under this paragraph, or that a minor sanction has been unjustly imposed, may, pursuant to Regulation 15, petition the faculty grievance committee for such action as may be appropriate.

8. TERMINAL SALARY OR NOTICE

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service; at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service; at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal involved moral turpitude. On the recommendation of the faculty hearing committee or the president, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

9. ACADEMIC FREEDOM AND PROTECTION AGAINST DISCRIMINATION

(a) All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, formulated by the Association of American Colleges and the American Association of University Professors.

(b) All members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance, including but not limited to race, sex, religion, national origin, age, disability, marital status, or sexual orientation.

10. COMPLAINTS OF VIOLATION OF ACADEMIC FREEDOM OR OF DISCRIMINATION IN NONREAPPOINTMENT

If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly on considerations violative of (a) academic freedom or (b) governing policies on making appointments without prejudice with respect to race, sex, religion, national origin, age, disability, marital status, or sexual orientation, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation will be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty

committees, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which the allegations are based, and the burden of proof will rest upon the faculty member. If the faculty member succeeds in establishing a prima facie case, it is incumbent upon those who made the decision against reappointment to come forward with evidence in support of their decision. Statistical evidence of improper discrimination may be used in establishing a prima facie case.

11. ADMINISTRATIVE PERSONNEL

The foregoing regulations apply to administrative personnel who hold academic rank, but only in their capacity as faculty members. Administrators who allege that a consideration violative of academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, significantly contributed to a decision to terminate their appointment to an administrative post, or not to reappoint them, are entitled to the procedures set forth in Regulation 10.

12. POLITICAL ACTIVITIES OF FACULTY MEMBERS

Faculty members, as citizens, are free to engage in political activities. Where necessary, leaves of absence may be given for the duration of an election campaign or a term of office, on timely application, and for a reasonable period of time. The terms of such leave of absence will be set forth in writing, and the leave will not affect unfavorably the tenure status of a faculty member, except that time spent on such leave will not count as probationary service unless otherwise agreed to.¹⁰

[NOTE: Regulations 13, 14, and 15 are suggested in tentative form, and will require adaptation to the specific structure and operations of the institution; the provisions as recommended here are intended only to indicate the nature of the provisions to be included, and not to offer specific detail.]

13. GRADUATE STUDENT ACADEMIC STAFF

- (a) The terms and conditions of every appointment to a graduate or teaching assistantship will be stated in writing, and a copy of the appointment document will be supplied to the graduate or teaching assistant.
- (b) In no case will a graduate or teaching assistant be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee. (A dismissal is a termination before the end of the period of appointment.)

(c) A graduate or teaching assistant who establishes a prima facie case to the satisfaction of a duly constituted committee that a decision against reappointment was based significantly on considerations violative of academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.

(d) Graduate or teaching assistants will have access to the faculty grievance committee, as provided in Regulation 15.

14. OTHER ACADEMIC STAFF

(a) In no case will a member of the academic staff¹¹ who is not otherwise protected by the preceding regulations which relate to dismissal proceedings be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee. (A dismissal is a termination before the end of the period of appointment.)

(b) With respect to the nonreappointment of a member of such academic staff who establishes a prima facie case to the satisfaction of a duly constituted committee that a consideration violative of academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, significantly contributed to the nonreappointment, the academic staff member will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.

15. GRIEVANCE PROCEDURE

If any faculty member alleges cause for grievance in any matter not covered by the procedures described in the foregoing regulations, the faculty member may petition the elected faculty grievance committee [here name the committee] for redress. The petition will set forth in detail the nature of the grievance and will state against whom the grievance is directed. It will contain any factual or other data which the petitioner deems pertinent to the case. Statistical evidence of improper discrimination, including discrimination in salary, may be used in establishing a prima facie case. The committee will decide whether or not the facts merit a detailed investigation; if the faculty member succeeds in establishing a prima facie case, it is incumbent upon those who made the decision to come forward with evidence in support of their decision. Submission of a petition will not automatically entail investigation or detailed consideration thereof. The committee may seek to bring about a settlement of the issue(s) satisfactory to the parties. If in the opinion of the committee such a settlement is not possible or is not appropriate, the committee will report its findings and recommendations to the petitioner and to the appropriate administrative officer and faculty body, and the petitioner will, upon request, be provided an opportunity to present the grievance to them. The grievance committee will consist of three [or some other number] elected members of the faculty. No officer of administration will serve on the committee.

NOTE ON IMPLEMENTATION

The *Recommended Institutional Regulations* here presented will require for their implementation a number of structural arrangements and agencies. For example, the *Regulations* will need support by:

- (a) channels of communication among all the involved components of the institution, and between them and a concerned faculty member;
- (b) definitions of corporate and individual faculty status within the college or university government, and of the role of the faculty in decisions relating to academic freedom and tenure; and
- (c) appropriate procedures for the creation and operation of faculty committees, with particular regard to the principles of faculty authority and responsibility.

The forms which these supporting elements assume will of course vary from one institution to another. Consequently, no detailed description of the elements is attempted in these *Recommended Institutional Regulations*. With respect to the principles involved, guidance will be found in the Association's *1966 Statement on Government of Colleges and Universities*.

Endnotes:

1 Under the "1940 Statement of Principles on Academic Freedom and Tenure," this period may not exceed seven years.[Back to Text](#)

2. The exception here noted applies only to an institution whose maximum probationary period exceeds four years.[Back to Text](#)

3. April 15 is the recommended date.[Back to Text](#)

4. This committee, which can be the grievance committee noted in Regulation 15, is to be an elected faculty body. Similarly, the members of the committees noted in Regulations 4(c)(2), 4(d)(3), and 10 are to be elected. A committee of faculty members appointed by an appropriate elected faculty body can substitute for a committee that is elected directly. [Back to Text](#)

5. See "The Role of the Faculty in Budgetary and Salary Matters" (AAUP, *Policy Documents and Reports*, 9th ed. [Washington, D.C., 2001], 232–35), especially the following passages:

The faculty should participate both in the preparation of the total institutional budget and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plant and grounds, etc.). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. . . .

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.[Back to Text](#)

6. See "Statement on Government of Colleges and Universities" (*Policy Documents and Reports*, 217–23), especially the following passage:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.[Back to Text](#)

7. When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of Regulation 4(c) above will apply.[Back to Text](#)

8. This committee should not be the same as the committee referred to in Regulation 5(b)(2).[Back to Text](#)

9. Regulations of the institution should provide for alternates, or for some other method of filling vacancies on the hearing committee resulting from disqualification, challenge without stated cause, illness, resignation, or other reason.[Back to Text](#)

10. See "Statement on Professors and Political Activity," *Policy Documents and Reports*, 33–34.[Back to Text](#)

11. Each institution should define with particularity who are members of the academic staff.[Back to Text](#)

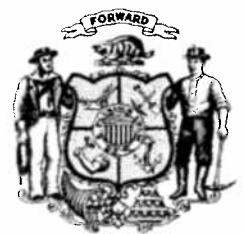
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WISCONSIN STATE LEGISLATURE



Attachment 3

CHAPTER 36

UNIVERSITY OF WISCONSIN SYSTEM

36.01	Statement of purpose and mission.	36.32	Student identification numbers.
36.03	System.	36.33	Sale and relocation of agricultural lands.
36.05	Definitions.	36.34	Minority student programs.
36.07	Corporate title, officers, meetings, records.	36.35	Misconduct; campus security.
36.09	Responsibilities.	36.36	Grants for study abroad.
36.11	Powers and duties of the board of regents.	36.37	Downer Woods and buildings preservation.
36.12	Student discrimination prohibited.	36.39	Complimentary and reduced price tickets prohibited.
36.13	Faculty tenure and probationary appointments.	36.395	Fees for use of facilities.
36.14	Wisconsin distinguished professorships.	36.40	Use of animals for research purposes.
36.15	Academic staff appointments.	36.43	Accommodation of religious beliefs.
36.17	Limited appointments.	36.44	License plate scholarship programs.
36.19	Other appointments.	36.45	Research funding.
36.21	Lapse of appointments.	36.46	Auxiliary reserves.
36.23	Conflict of interest.	36.48	Alcohol and other drug abuse prevention and intervention programs.
36.25	Special programs.	36.51	Nutritional improvement for elderly.
36.27	Tuition.	36.52	Reimbursement of pay supplements.
36.28	Medical school enrollment.	36.54	Environmental education board and grants.
36.29	Gifts; golf course.	36.55	Reporting employment harassment and discrimination claims.
36.30	Sick leave.	36.56	Grants for forestry cooperatives.
36.31	Coordination with other educational agencies.	36.58	Veterinary diagnostic laboratory.

Cross Reference: See also UWS, Wis. adm. code.

36.01 Statement of purpose and mission. (1) The legislature finds it in the public interest to provide a system of higher education which enables students of all ages, backgrounds and levels of income to participate in the search for knowledge and individual development; which stresses undergraduate teaching as its main priority; which offers selected professional graduate and research programs with emphasis on state and national needs; which fosters diversity of educational opportunity; which promotes service to the public; which makes effective and efficient use of human and physical resources; which functions cooperatively with other educational institutions and systems; and which promotes internal coordination and the wisest possible use of resources.

(2) The mission of the system is to develop human resources, to discover and disseminate knowledge, to extend knowledge and its application beyond the boundaries of its campuses and to serve and stimulate society by developing in students heightened intellectual, cultural and humane sensitivities, scientific, professional and technological expertise and a sense of purpose. Inherent in this broad mission are methods of instruction, research, extended training and public service designed to educate people and improve the human condition. Basic to every purpose of the system is the search for truth.

History: 1973 c. 335.

36.03 System. There is created in this state a system of institutions of learning to be known as the University of Wisconsin System. The principal office and one university of the system shall be located at or near the seat of state government.

History: 1973 c. 335.

36.05 Definitions. In this chapter:

(1) "Academic staff" means professional and administrative personnel with duties, and subject to types of appointments, that are primarily associated with higher education institutions or their administration, but does not include faculty and staff provided under s. 16.57.

(2) "Board of regents" or "board" means the board of regents of the University of Wisconsin System.

(3) "Campus" means the publicly owned or leased buildings and grounds which comprise all or part of an institution or the extension.

(5) "Chancellor" means the chief executive of an institution.

(6) "Classified staff" means all employees of the system other than faculty, academic staff, persons whose employment is a necessary part of their training, student assistants and student hourly help.

(6m) "College campus" means any one of the 2-year collegiate campuses of the system.

(7) "Extension" means the community outreach, public service and extension services of the system.

(8) "Faculty" means persons who hold the rank of professor, associate professor, assistant professor or instructor in an academic department or its functional equivalent in an institution, persons described under s. 36.13 (4) (c) and such academic staff, as may be designated by the chancellor and faculty of the institution.

(9) "Institution" means any university or an organizational equivalent designated by the board and the University of Wisconsin colleges.

(9m) "Instructional academic staff" means academic staff members with teaching responsibilities.

(9s) "Mainframe" means a large scale, central computer maintained by the board for multipurpose functions.

(10) "President" means the chief executive of the system.

(11) "Student" means any person who is registered for study in any institution for the current academic period. For the purpose of administering particular programs or functions involving students, the board shall promulgate rules defining continuation or termination of student status during periods between academic periods.

(12) "System" means the University of Wisconsin System.

(13) "University" means any baccalaureate or graduate degree granting institution.

(14) "University of Wisconsin Colleges" means the college campuses as a whole.

History: 1973 c. 335; 1985 a. 332 s. 251 (3); 1989 a. 31, 67; 1991 a. 39; 1995 a. 27; 1997 a. 237.

36.07 Corporate title, officers, meetings, records.

(1) CORPORATE STATUS AND TITLE. The board and their successors in office shall constitute a body corporate by the name of "Board of Regents of the University of Wisconsin System".

(2) SECRETARY. The board shall appoint a secretary of the board who shall keep a faithful record of all its transactions.

36.12 Student discrimination prohibited. (1) No student may be denied admission to, participation in or the benefits of, or be discriminated against in any service, program, course or facility of the system or its institutions because of the student's race, color, creed, religion, sex, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status.

(2) (a) The board shall direct each institution to establish policies and procedures to protect students from discrimination under sub. (1). The policies and procedures shall do all of the following:

1. Provide criteria for determining whether sub. (1) has been violated.
2. Provide remedies and sanctions for violations of sub. (1).
3. Require a complainant to file a complaint with the institution within 300 days of the alleged violation of sub. (1).
4. Provide periods within which the complainant and the institution must act for each procedural step leading to the issuance of a final decision and for appeal of the final decision to the chancellor of the institution.

(b) The board shall establish policies and procedures for the appeal of the chancellor's or dean's decision to the board.

(3) By September 1, 1991, 1992, 1993, and 1994, the board shall submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3). The report shall specify all of the following for the previous academic year:

(a) The number of complaints received at each institution alleging a violation of sub. (1) and the disposition of each such complaint.

(b) The number of requests for review received by the board and the disposition of each such request.

History: 1989 a. 186; 1997 a. 237.

Student body diversity is a compelling state interest that can justify the use of race in university admissions. A race-conscious admissions program cannot use a quota system, but may consider race or ethnicity as a plus factor for an applicant, without insulating the individual from comparison with all other candidates for the available seats. An admissions program must be flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. Race-conscious admissions policies must be limited in time. *Grutter v. Bollinger*, 539 U.S. 306, 156 L. Ed. 2d 304, 123 S. Ct. 2325 (2003). See also *Gratz v. Bollinger*, 539 U.S. 257, 156 L. Ed. 2d 257, 123 S. Ct. 2411 (2003).

36.13 Faculty tenure and probationary appointments.

(1) DEFINITIONS. In this section:

(a) "Probationary appointment" means an appointment by the board held by a faculty member during the period which may precede a decision on a tenure appointment.

(b) "Tenure appointment" means an appointment for an unlimited period granted to a ranked faculty member by the board.

(2) APPOINTMENTS. (a) Except as provided under par. (b), the board may grant a tenure appointment only upon the affirmative recommendation of the appropriate chancellor and the appropriate academic department or its functional equivalent. Neither the chancellor nor the academic department or its functional equivalent may base a tenure recommendation upon impermissible factors, as defined by the board by rule.

(b) The board may grant a tenure appointment without the affirmative recommendation of the appropriate academic department or its functional equivalent if all of the following apply:

1. The board has the affirmative recommendation of the appropriate chancellor.
2. A faculty committee authorized by the board by rule to review the negative recommendation of the academic department or its functional equivalent finds that the decision of the academic department or its functional equivalent was based upon impermissible factors, as defined by the board by rule.

3. The board has the affirmative recommendation of a committee appointed according to the policies and procedures of the appropriate institution to review the individual's record with reference to criteria for tenure published by the institution under pro-

cedures established by the board by rule. No person may be appointed to the committee under this subdivision unless the person is knowledgeable or experienced in the individual's academic field or in a substantially similar academic field. No member of the committee appointed under this subdivision may be a member of the academic department, or its functional equivalent, that made the negative recommendation. The committee appointed under this subdivision may not base its tenure recommendation upon impermissible factors, as defined by the board by rule.

(c) A tenure appointment may be granted to any ranked faculty member who holds or will hold a half-time appointment or more. The proportion of time provided for in the appointment may not be diminished nor increased without the mutual consent of the faculty member and the institution subject only to sub. (5) and s. 36.21.

(d) A probationary appointment shall not exceed 7 consecutive academic years in a full-time position in an institution. A leave of absence, sabbatical or a teacher improvement assignment does not constitute a break in continuous service and shall not be included in the 7-year period. The board may promulgate rules specifying additional circumstances that do not constitute a break in continuous service and that shall not be included in the 7-year period.

(3) RULES. The board and its several faculties after consultation with appropriate students shall promulgate rules for tenure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of faculty members. Such rules shall be promulgated under ch. 227.

(4) CONTINUATION OF APPOINTMENT. (a) Any person who holds a tenure appointment under ch. 36, 1971 stats. and ch. 37, 1971 stats., and related rules on July 9, 1974 shall continue to hold tenure as defined under those chapters and related rules.

(b) Any person who holds the equivalent of a probationary appointment under ch. 36, 1971 stats., and ch. 37, 1971 stats., and related rules on July 9, 1974 shall continue to enjoy the contractual rights and guarantees as defined under those chapters and related rules, and may elect to be considered for tenure according to the procedures existing under that appointment or under sub. (2).

(c) Any person who is not a ranked faculty member on August 15, 1991, and who is also described under subd. 1. or 2. shall be treated as a faculty member with the rank of associate professor for all purposes:

1. Any person who held an unranked faculty tenure appointment or unranked faculty concurrent tenure appointment under ch. 37, 1971 stats., prior to July 10, 1974.

2. Any person who held an unranked probationary appointment under ch. 37, 1971 stats., prior to July 10, 1974, and who subsequently received an unranked faculty tenure appointment or unranked faculty concurrent tenure appointment.

(5) PROCEDURAL GUARANTEES. Any person having tenure may be dismissed only for just cause and only after due notice and hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract term only for just cause and only after due notice and hearing. The action and decision of the board in such matters shall be final, subject to judicial review under ch. 227. The board and its several faculties shall develop procedures for the notice and hearing which shall be promulgated by rule under ch. 227.

(6) LIMITATION. Tenure and probationary appointments are in a particular institution. A tenure appointment is limited to the institution in which the appointment is held.

History: 1973 c. 335; 1983 a. 189; 1985 a. 332 s. 251 (1); 1987 a. 403 s. 256; 1989 a. 31; 1991 a. 39, 118.

Cross Reference: See also chs. UWS 3, 4, 5, 6, and 19, Wis. adm. code.

The due process rights of a tenured professor who was alleged to have resigned were not protected by a hearing to determine eligibility for unemployment compensation. *Paterson v. University Board of Regents*, 119 Wis. 2d 570, 350 N.W.2d 612 (1984).

The Board did not have authority to grant tenure without the affirmative recommendation of the appropriate academic department. *Trojan v. Board of Regents*, 128 Wis. 2d 270, 382 N.W.2d 75 (Cl. App. 1985).

Under s. 37.31, Stats. 1971, the faculty acquires tenure in the system as distinct from tenure at one particular institution within the system. 60 Am. Gen. 116.

A non-tenured teacher who is not rehired has no constitutional right to a statement of the reason for not renewing his or her contract nor to a hearing on the matter. Board of Regents v. Roth, 408 U.S. 564.

36.14 Wisconsin distinguished professorships.

(1) The board may establish distinguished professorships under this section.

(2) The board may pay under this section the salary and fringe benefit costs of the professor holding the distinguished professorship and of any graduate assistant assigned to the professor, and the equipment, supplies and travel costs of the professor and the graduate assistants assigned to the professor.

(3) The board may pay the costs specified under sub. (2) only from the appropriations under s. 20.285 (1) (a), (am) and (jm). The board may pay any of the costs specified under sub. (2) from the appropriation under s. 20.285 (1) (jm). The board may pay from the appropriation under s. 20.285 (1) (am) only the salary and fringe benefit costs of the professor but may not pay more than 50% of those costs from that appropriation. Annually the board shall report to the department of administration all expenditures from the appropriation under s. 20.285 (1) (a) made for the purposes of this section.

(4) The board shall ensure that at least 3 of the professors awarded distinguished professorships under this section after August 9, 1989, are not employed by the board when they are awarded the professorships.

History: 1987 a. 27; 1989 a. 31.

36.15 Academic staff appointments. (1) DEFINITIONS. In this section:

(a) "Administrative appointment" means an academic staff appointment for a fixed or indefinite term granted to a system, campus, college, school or other divisional officer involved in policy development or execution and to persons involved in directing, organizing or supervising higher education related activities.

(b) "Professional appointment" means an academic staff appointment for a fixed or indefinite term granted to a professional employee who is involved in the guidance or counseling of students, assisting the faculty in research, public service or in the instruction of students or who is involved in other professional duties which are primarily associated with institutions of higher education; including, but not limited to, such employment titles as visiting faculty, clinical staff, lecturer, scientist, specialist and such other equivalent titles as the board approves.

(2) APPOINTMENTS. Appointments under this section shall be made by the board, or by an appropriate official authorized by the board, under policies and procedures established by the board and subject to s. 36.09 (1) (i). The policies for indefinite appointments shall provide for a probationary period, permanent status and such other conditions of appointment as the board establishes.

(2m) LIBRARIAN APPOINTMENTS. If in any institution all professional librarians with appropriate graduate degrees as determined in accordance with that institution's policies, have formerly been ranked faculty, all present and future appointments of professional librarians with appropriate graduate degrees in such institution shall be as ranked faculty, except in those institutions where the chancellor and faculty designate that such appointments shall be as academic staff.

(3) PROCEDURAL GUARANTEES. 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. A person having an academic staff appointment for an indefinite term who has attained permanent status may be dismissed only for just cause and only after due notice and hearing. In such matters the action and decision of the board, or the appropriate official authorized by the board, shall be final, subject to judicial review under ch. 227. The board shall develop procedures

for notice and hearing which shall be promulgated as rules under ch. 227.

History: 1973 c. 335 and Supp.; 1985 a. 332; 1989 a. 31.

Cross Reference: See also ch. UWS 3, 9, 10, 11, 12, and 19, Wis. adm. code.

36.17 Limited appointments. (1) An appointment to a position listed in sub. (2) shall be a limited appointment and the appointment shall be at the pleasure of the board. A person holding a tenured or academic staff appointment under ss. 36.13 and 36.15 shall not lose that appointment by accepting a limited appointment.

(2) Limited appointments apply to the following positions: president, provost, vice president, associate vice president, assistant vice president, chancellor, vice chancellor, associate chancellor, assistant chancellor, associate vice chancellor, assistant vice chancellor, college campus dean, secretary of the board, associate secretary of the board, assistant secretary of the board, trust officer and assistant trust officer and such other administrative positions as the board determines at the time of the appointment.

History: 1973 c. 335; 1997 a. 237.

Cross Reference: See also chs. UWS 15 and 19, Wis. adm. code.

36.19 Other appointments. The board may make or authorize fixed term appointments for student assistants and employees in training, such as residents, interns, post-doctoral fellows or trainees or associates. Appointments made under this section shall not be subject to ss. 36.13 and 36.15.

History: 1973 c. 335.

Cross Reference: See also ch. UWS 16, Wis. adm. code.

36.21 Lapse of appointments. Notwithstanding ss. 36.13

(4) and 36.15, the board may, with appropriate notice, terminate any faculty or academic staff appointment when a financial emergency exists. No person may be employed at the institution within 2 years to perform reasonably comparable duties to those of the person whose appointment was terminated without first offering such person a reappointment. The board, after consultation with the faculty and chancellor of each institution, shall adopt procedures to be followed in the event of termination under this section.

History: 1973 c. 335.

36.23 Conflict of interest. No regent or officer or other person appointed or employed in any position in the system may at any time act as agent for any person or organization where such act would create a conflict of interest with the terms of the person's service in the system. The board shall define conflicts of interest and promulgate rules related thereto.

History: 1973 c. 335; 1985 a. 332 r. 251 (1).

Cross Reference: See also ch. UWS 8, Wis. adm. code.

A regent of the University of Wisconsin is not precluded by law from attending the university as a student or from receiving a degree from the university, but he must guard against and refrain from any possible conflict of interest. 58 Am. Gen. 158.

36.25 Special programs. (2) WISCONSIN RESIDENTS PREFERENCE IN HOUSING. Preference as to rooming, boarding and apartment facilities in the use of living units operated by any university shall, for the following school year, be given to students who are residents of this state and who apply before March 15, unless a later date is set by the board. Such preference shall be granted in accordance with categories of priority established by the board. Leases or other agreements for occupancy of such living units shall not exceed a term of one calendar year. The board may promulgate rules for the execution of this subsection.

(3) AGRICULTURAL DEMONSTRATION STATIONS. EXPERIMENTS. DEMONSTRATIONS. (a) The board may establish through the College of Agricultural and Life Sciences of the University of Wisconsin-Madison demonstration stations for the purpose of aiding in agricultural development. The location of the stations shall be determined by the board which shall consider the opportunities for agricultural development in various regions of the state.

(b) The board may authorize experimental work in agriculture at points within the state and carry on demonstrations and such other extension work as it deems advisable for the improvement

Attachment 4

Chapter UWS 3

FACULTY APPOINTMENTS

UWS 3.01	Types of appointments
UWS 3.02	Recruiting
UWS 3.03	Appointments—general
UWS 3.04	Probationary appointments
UWS 3.05	Periodic review
UWS 3.06	Renewal of appointments and granting of tenure

UWS 3.07	Nonrenewal of probationary appointment
UWS 3.08	Appeal of a nonrenewal decision
UWS 3.09	Notice periods
UWS 3.10	Absence of proper notification
UWS 3.11	Limitation

UWS 3.01 Types of appointments. (1) Appointments to the faculty are either tenure or probationary appointments. Faculty appointments carry the following titles: professor, associate professor, assistant professor, and instructor.

(a) "Tenure appointment" means an appointment for an unlimited period granted to a ranked faculty member by the board upon the affirmative recommendation of the appropriate academic department, or its functional equivalent, and the chancellor of an institution via the president of the system.

(b) "Probationary appointment" means an appointment by the board upon the affirmative recommendation of the appropriate academic department, or its functional equivalent, and the chancellor of an institution and held by a faculty member during the period which may precede a decision on a tenure appointment.

(c) In accordance with s. 36.05 (8), Stats., academic staff appointments may be converted to faculty appointments by the action of the board upon the recommendation of the appropriate faculty body and the chancellor of an institution. Such faculty appointees shall enjoy all the rights and privileges of faculty.

(d) In accordance with s. UWS 1.05 members of the academic staff may be given faculty status. Members of the academic staff who have been given faculty status have employment rights under the rules and policies concerning academic staff.

(e) A person holding a faculty appointment under ss. 36.13 and 36.15, Stats., shall not lose that appointment by accepting a limited appointment for a designated administrative position.

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

UWS 3.02 Recruiting. The faculty of each institution, after consultation with appropriate students and with the approval of the chancellor, shall develop procedures relating to recruitment of members of the faculty. The procedure shall be consistent with board policy and state and federal laws with respect to nondiscriminatory and affirmative action recruitment. The procedures shall allow maximum flexibility at the departmental, school and college levels to meet particular needs. In all instances the procedures shall provide for departmental peer review and judgment as the operative step in the recruiting process.

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

UWS 3.03 Appointments—general. The faculty of each institution, after consultation with appropriate students and with the approval of the chancellor, shall develop rules relating to faculty appointments. Each person to whom an appointment is offered must receive an appointment letter in which an authorized official of the institution details the terms and conditions of the appointment, including but not limited to, duration of the appointment, salary, starting date, ending date, general position responsibilities, probation, tenure status, and crediting of prior service. Accompanying this letter shall be an attachment detailing institutional and system rules and procedures relating to faculty appointments. If the appointment is subject to the advance approval of the board, a statement to this effect must be included in the letter.

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

UWS 3.04 Probationary appointments. (1) Each institution's rules for faculty appointments shall provide for a maximum 7-year probationary period in a full-time position, and may provide for a longer maximum probationary period in a part-time position of at least half time. Such rules may permit appointments with shortened probationary periods or appointments to tenure without a probationary period. Provision shall be made for the appropriate counting of prior service at other institutions and at the institution. Tenure is not acquired solely because of years of service.

(2) A leave of absence, sabbatical or a teacher improvement assignment does not constitute a break in continuous service and shall not be included in the 7-year period under sub. (1).

(3) Circumstances in addition to those identified under sub. (2) that do not constitute a break in continuous service and that shall not be included in the 7-year period include responsibilities with respect to childbirth or adoption, significant responsibilities with respect to elder or dependent care obligations, disability or chronic illness, or circumstances beyond the control of the faculty member, when those circumstances significantly impede the faculty member's progress toward achieving tenure. It shall be presumed that a request made under this section because of responsibilities with respect to childbirth or adoption shall be approved. A request shall be made before a tenure review commences under s. UWS 3.06 (1) (c). A request for additional time because of responsibilities with respect to childbirth or adoption shall be initiated in writing by the probationary faculty member concerned and shall be submitted to a designated administrative officer who shall be authorized to grant a request and who shall specify the length of time for which the request is granted. Except for a request because of responsibilities with respect to childbirth or adoption, a request made because of other circumstances under this section shall be submitted to a designated administrative officer who shall be authorized to grant a request in accordance with institutional policies. A denial of a request shall be in writing and shall be based upon clear and convincing reasons. More than one request may be granted because of responsibilities with respect to childbirth or adoption. More than one request may be granted to a probationary faculty member but the total, aggregate length of time of all requests, except for a request because of responsibilities with respect to childbirth or adoption, granted to one probationary faculty member ordinarily shall be no more than one year. Each institution shall develop procedures for reviewing the requests.

(4) If any faculty member has been in probationary status for more than 7 years because of one or more of the reasons set forth in sub. (2) or (3), the faculty member shall be evaluated as if he or she had been on probationary status for 7 years.

Example: A faculty member has been on probationary status for a total of 9 years because the faculty member was granted 2 requests under sub. (3) for one-year extensions because of the birth of 2 children. The faculty member's teaching, research and professional and public service and contribution to the institution shall be evaluated as if the faculty member had only 7 years to work towards achieving

tenure, rather than as if the faculty member had been working towards achieving tenure for 9 years.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; ream. to be (1) and am., cr. (2) to (4), Register, February, 1994, No. 458, eff. 3-1-94.

UWS 3.05 Periodic review. The faculty and chancellor of each institution, after consultation with appropriate students, shall establish rules providing for periodic review of faculty performance.

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

UWS 3.06 Renewal of appointments and granting of tenure. (1) (a) *General.* Appointments may be granted only upon the affirmative recommendation of the appropriate academic department, or its functional equivalent, and the chancellor of an institution. When specified by the board, the institutional recommendation shall be transmitted by the president of the system with a recommendation to the board for action. Tenure appointments may be granted to any ranked faculty member who holds or will hold a half-time appointment or more. The proportion of time provided for in the appointment may not be diminished or increased without the mutual consent of the faculty member and the institution, unless the faculty member is dismissed for just cause, pursuant to s. 36.13 (5), Stats., or is terminated or laid off pursuant to s. 36.21, Stats.

(b) *Criteria.* Decisions relating to renewal of appointments or recommending of tenure shall be made in accordance with institutional rules and procedures which shall require an evaluation of teaching, research, and professional and public service and contribution to the institution. The relative importance of these functions in the evaluation process shall be decided by departmental, school, college, and institutional faculties in accordance with the mission and needs of the particular institution and its component parts. Written criteria for these decisions shall be developed by the appropriate institutional faculty bodies. Written criteria shall provide that if any faculty member has been in probationary status for more than 7 years because of one or more of the reasons set forth in s. UWS 3.04 (2) or (3), the faculty member shall be evaluated as if he or she had been in probationary status for 7 years.

(c) *Procedures.* The faculty and chancellor of each institution, after consultation with appropriate students, shall establish rules governing the procedures for renewal or probationary appointments and for recommending tenure. These rules shall provide for written notice of the departmental review to the faculty member at least 20 days prior to the date of the departmental review, and an opportunity to present information on the faculty member's behalf. The probationary faculty member shall be notified in writing within 20 days after each decision at each reviewing level. In the event that a decision is made resulting in nonrenewal, the procedures specified in s. UWS 3.07 shall be followed.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; am. (1) (b), Register, February, 1994, No. 458, eff. 3-1-94; correction in (1) (a) made under s. 13.93 (2m) (b) 5., Stats., Register, February, 1994, No. 458.

UWS 3.07 Nonrenewal of probationary appointments. (1) (a) *Rules and procedures.* The faculty and chancellor of each institution, after consultation with appropriate students, shall establish rules and procedures for dealing with instances in which probationary faculty appointments are not renewed. These rules and procedures shall provide that, upon the timely written request of the faculty member concerned, the department or administrative officer making the decision shall, within a reasonable time, give him or her written reasons for nonrenewal. Such reasons shall become a part of the personnel file of the individual. Further, the rules and procedures shall provide for reconsideration of the initial nonrenewal decision upon timely written request.

(b) *Reconsideration.* The purpose of reconsideration of a nonrenewal decision shall be to provide an opportunity to a fair and full reconsideration of the nonrenewal decision, and to insure that all relevant material is considered.

1. Such reconsideration shall be undertaken by the individual or body making the nonrenewal decision and shall include, but not be limited to, adequate notice of the time of reconsideration of the decision, an opportunity to respond to the written reasons and to present any written or oral evidence or arguments relevant to the decision, and written notification of the decision resulting from the reconsideration.

2. Reconsideration is not a hearing or an appeal, and shall be nonadversary in nature.

3. In the event that a reconsideration affirms the nonrenewal decision, the procedures specified in s. UWS 3.08 shall be followed.

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

UWS 3.08 Appeal of a nonrenewal decision. (1) The faculty and chancellor of each institution, after consultation with appropriate students, shall establish rules and procedures for the appeal of a nonrenewal decision. Such rules and procedures shall provide for the review of a nonrenewal decision by an appropriate standing faculty committee upon written appeal by the faculty member concerned within 20 days of notice that the reconsideration has affirmed the nonrenewal decision (25 days if notice is by first class mail and publication). Such review shall be held not later than 20 days after the request, except that this time limit may be enlarged by mutual consent of the parties, or by order of the review committee. The faculty member shall be given at least 10 days notice of such review. The burden of proof in such an appeal shall be on the faculty member, and the scope of the review shall be limited to the question of whether the decision was based in any significant degree upon one or more of the following factors, with material prejudice to the individual:

(a) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, or

(b) Factors proscribed by applicable state or federal law regarding fair employment practices, or

(c) Improper consideration of qualifications for reappointment or renewal. For purposes of this section, "improper consideration" shall be deemed to have been given to the qualifications of a faculty member in question if material prejudice resulted because of any of the following:

1. The procedures required by rules of the faculty or board were not followed, or

2. Available data bearing materially on the quality of performance were not considered, or

3. Unfounded, arbitrary or irrelevant assumptions of fact were made about work or conduct.

(2) The appeals committee shall report on the validity of the appeal to the body or official making the nonrenewal decision and to the appropriate dean and the chancellor.

(3) Such a report may include remedies which may, without limitation because of enumeration, take the form of a reconsideration by the decision maker, a reconsideration by the decision maker under instructions from the committee, or a recommendation to the next higher appointing level. Cases shall be remanded for reconsideration by the decision maker in all instances unless the appeals committee specifically finds that such a remand would serve no useful purpose. The appeals committee shall retain jurisdiction during the pendency of any reconsideration. The decision of the chancellor will be final on such matters.

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

UWS 3.09 Notice periods. (1) A faculty member who is employed on probationary appointment pursuant to s. 36.13, Stats., shall be given written notice of reappointment or nonreappointment for another academic year in advance of the expiration of the current appointment as follows:

(a) When the appointment expires at the end of an academic year, not later than March 1 of the first academic year and not later

than December 15 of the second consecutive academic year of service;

(b) If the initial appointment expires during an academic year, at least 3 months prior to its expiration; if a second consecutive appointment terminates during the academic year, at least 6 months prior to its expiration;

(c) After 2 or more years of continuous service at an institution of the university of Wisconsin system, such notice shall be given at least 12 months before the expiration of the appointment.

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

UWS 3.10 Absence of proper notification. If proper notice is not given in accordance with s. UWS 3.09, the aggrieved

faculty member shall be entitled to a one-year terminal appointment. Such appointments, however, shall not result in the achievement of tenure.

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

UWS 3.11 Limitation. Tenure and probationary appointments are in a particular institution; a tenure appointment is limited to the institution in which the appointment is held, unless another institution has, through normal procedures and explicit agreement, undertaken to share in the appointment. The explicit agreement shall specify both the tenure responsibility and the budget responsibility.

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

Attachment 5

Chapter UWS 4

PROCEDURES FOR DISMISSAL

UWS 4.01	Dismissal for cause.	UWS 4.06	Procedural guarantees.
UWS 4.02	Responsibility for charges.	UWS 4.07	Recommendations to the chancellor; to the regents.
UWS 4.03	Standing faculty committee.	UWS 4.08	Board review.
UWS 4.04	Hearing.	UWS 4.09	Suspension from duties.
UWS 4.05	Adequate due process.	UWS 4.10	Date of dismissal.

UWS 4.01 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/her term of appointment only by the board and only for just cause and only after due notice and hearing. A decision not to renew a probationary appointment or not to grant tenure does not constitute a dismissal.

(2) A faculty member is entitled to enjoy and exercise all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.

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

UWS 4.02 Responsibility for charges. (1) Whenever the chancellor of an institution within the university of Wisconsin system receives a complaint against a faculty member which he/she deems substantial and which, if true, might lead to dismissal under s. UWS 4.01, the chancellor shall within a reasonable time initiate an investigation and shall, prior to reaching a decision on filing charges, offer to discuss the matter informally with the faculty member. A faculty member may be dismissed only after receipt of a written statement of specific charges from the chancellor as the chief administrative officer of the institution and, if a hearing is requested by the faculty member, in accordance with the provisions of this chapter. If the faculty member does not request a hearing, action shall proceed along normal administrative lines but the provisions of ss. UWS 4.02, 4.09, and 4.10 shall still apply.

(2) Any formal statement of specific charges for dismissal sent to a faculty member shall be accompanied by a statement of the appeal procedures available to the faculty member.

(3) The statement of charges shall be served personally 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.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474.

UWS 4.03 Standing faculty committee. The faculty of each institution shall provide a standing committee charged with hearing dismissal cases and making recommendations under this chapter. This standing faculty committee shall operate as the hearing agent for the board pursuant to s. 227.49, Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along

with its recommended findings of law and decision to the board according to s. UWS 4.07.

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

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

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

UWS 4.05 Adequate due process. (1) A fair hearing for a faculty member whose dismissal is sought under s. UWS 4.01 shall include the following:

- (a) Service of written notice of hearing on the specific charges at least 10 days prior to the hearing;
- (b) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
- (c) A right to be heard in his/her defense;
- (d) A right to counsel and/or other representatives, and to offer witnesses;
- (e) A right to confront and cross-examine adverse witnesses;
- (f) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
- (g) Written findings of fact and decision based on the hearing record;
- (h) Admissibility of evidence governed by s. 227.47, Stats.

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

UWS 4.06 Procedural guarantees. (1) Any hearing held shall comply with the requirements set forth in s. UWS 4.05. The following requirements shall also be observed:

- (a) The burden of proof of the existence of just cause is on the administration or its representatives;
- (b) No faculty member who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall be qualified to sit on the committee in that case;
- (c) The hearing shall be closed unless the faculty member under charges requests an open hearing, in which case it shall be open (see ch. 19, subch. V, Stats., Open Meeting Law);
- (d) The faculty hearing committee may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and pro-

cedures adopted by the faculty establishing the standing committee under s. UWS 4.03;

(e) The faculty hearing committee shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges;

(f) If the faculty hearing committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel shall be to advise the committee, consult with them on legal matters, and such other responsibilities as shall be determined by the committee within the provisions of the rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under s. UWS 4.03;

(g) If a proceeding on charges against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, he/she may elect that such proceeding be carried to a final decision. Unless he/she so elects in writing, the proceeding shall be discontinued at the expiration of the appointment;

(h) If a faculty member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit;

(i) Nothing in par. (h) shall prevent the settlement of cases by mutual agreement between the administration and the faculty member, with board approval, at any time prior to a final decision by the board;

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

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

UWS 4.07 Recommendations: to the chancellor; to the regents. (1) The faculty hearing committee shall send to the chancellor and to the faculty member concerned, as soon as practicable after conclusion of the hearing, a verbatim record of the testimony and a copy of its report, findings, and recommendations. The committee may determine that while adequate cause for discipline exists, some sanction less severe than dismissal is more appropriate. Within 20 days after receipt of this material the chancellor shall review it and afford the faculty member an opportunity to discuss it. The chancellor shall prepare a written recommendation within 20 days following the meeting with the faculty member, unless his/her proposed recommendation differs substantially from that of the committee. If the chancellor's proposed recommendations differ substantially from those of the faculty hearing committee, the chancellor shall promptly consult the faculty hear-

ing committee and provide the committee with a reasonable opportunity for a written response prior to forwarding his/her recommendation. If the recommendation is for dismissal, the recommendation shall be submitted through the president of the system to the board. A copy of the faculty hearing committee's report and recommendations shall be forwarded through the president of the system to the board along with the chancellor's recommendation. A copy of the chancellor's recommendation shall also be sent to the faculty member concerned and to the faculty committee.

(2) Disciplinary action other than dismissal may be taken by the chancellor, after affording the faculty member an opportunity to be heard on the record, except that, upon written request by the faculty member, such action shall be submitted as a recommendation through the president to the board together with a copy of the faculty hearing committee's report and recommendation.

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

UWS 4.08 Board review. (1) If the chancellor recommends dismissal, the board shall review the record before the faculty hearing committee and provide an opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, unless the board decides to drop the charges against the faculty member without a hearing or the faculty member elects to waive a hearing. This hearing shall be closed unless the faculty member requests an open hearing (see ch. 19, subch. V, Stats., Open Meeting Law).

(2) If, after the hearing, the board decides to take action different from the recommendation of the faculty hearing committee and/or the chancellor, then before taking final action the board shall consult with the faculty hearing committee and/or the chancellor, as appropriate.

(3) If a faculty member whose dismissal is sought does not request a hearing pursuant to s. UWS 4.04 the board shall take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

UWS 4.09 Suspension from duties. Pending the final decision as to his/her dismissal, the faculty member shall not normally be relieved of duties; but if, after consultation with appropriate faculty committees the chancellor finds that substantial harm to the institution may result if the faculty member is continued in his/her position, the faculty member may be relieved immediately of his/her duties, but his/her salary shall continue until the board makes its decision as to dismissal.

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

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

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

Attachment 6

Chapter UWS 10

ACADEMIC STAFF APPOINTMENTS

UWS 10.01 Types of appointments
 UWS 10.02 Recruitment and letter of appointment
 UWS 10.03 Appointments policies

UWS 10.04 Nonrenewal of probationary academic staff appointments
 UWS 10.05 Notice

UWS 10.01 Types of appointments. Academic staff appointments may be fixed term, probationary, or indefinite. Several probationary academic staff appointments may precede the granting of an indefinite appointment. Each institution shall develop guidelines concerning the categories of academic staff positions that may be appropriately designated as fixed term, probationary, or indefinite appointments. Appointments may be made in the central administration, an institution, college, department (or its functional equivalent), or a specified research or program unit. An appointment shall be limited to an operational area specified at the time of the appointment and shall not carry rights beyond that limitation.

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

UWS 10.02 Recruitment and letter of appointment.

(1) Each institution shall develop procedures relating to recruitment of members of the academic staff. The procedures shall be consistent with board policy and state and federal laws with respect to nondiscriminatory and affirmative action recruitment. The procedures shall allow maximum flexibility at the department, school, and college levels to meet particular needs.

(2) The terms and conditions of the appointment shall be specified in a written letter of appointment. The appointment letter shall be signed by an authorized official of the institution and should contain details as to the terms and conditions of the appointment, including but not limited to type of appointment (fixed term, probationary or indefinite), duration of the appointment (starting date, ending date), salary, general position responsibilities, definition of operational area, the length of the probationary period (if appropriate) and recognition of prior service as part of the probationary period (if appropriate). Accompanying this letter shall be an attachment detailing institutional and system regulations, rules, and procedures relating to academic staff appointments. If the appointment is subject to the approval of the board, a statement to this effect must be included in the letter. An amended letter of appointment should be sent in situations where a significant change in position responsibility occurs.

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

UWS 10.03 Appointments policies. (1) **FIXED TERM APPOINTMENTS.** Each institution of the system may employ academic staff members on fixed term appointments. Such appointments shall be for a fixed term to be specified in the letter of appointment, are renewable solely at the option of the employing institution, and carry no expectation of reemployment beyond their stated term, regardless of how many times renewed. The initial fixed term appointment may include a specified period of time during which the appointee may be dismissed at the discretion of the authorized official. Such a dismissal is not subject to the provisions of ch. UWS 11. Unless otherwise specified, fixed term appointments shall be for a period of one year. Each institution shall develop policies and procedures for the use of such appointments. The policies and procedures of each institution shall specifically treat the issue of job security including appropriate due process protections in the case of nonreappointment for those fixed term academic staff members who have served the institution for a substantial period of time. Such policies and procedures shall be for-

mulated so as to meet the continuing needs of the institution while at the same time recognizing the employment commitment and contribution to the institution provided by such fixed term academic staff members.

(2) **INDEFINITE AND PROBATIONARY ACADEMIC STAFF APPOINTMENTS.** Indefinite appointments and probationary academic staff appointments shall be authorized by the chancellor or designee.

(a) *Probationary academic staff appointments.* 1. Each institution of the system may appoint selected members of the academic staff to probationary academic staff appointments leading to review and a decision on an indefinite appointment. Each institution shall adopt procedures to govern such appointments. These procedures shall provide for appropriate counting of prior service, for a maximum probationary period not to exceed 7 years for a full-time position, for annual appraisal of performance, and for an affirmative review process prior to the end of the probationary period resulting in promotion to an indefinite appointment or termination of the appointment. A longer maximum probationary period may be provided for part-time appointees. Unless otherwise specified, probationary appointments shall be for a period of one year. An indefinite appointment is not acquired solely because of years of service.

2. A leave of absence shall not constitute a break in continuous service, nor shall it be included in the probationary period under sub. (1).

3. Circumstances that do not constitute a break in continuous service and that shall not be included in the 7-year period include responsibilities with respect to childbirth or adoption, significant responsibilities with respect to elder or dependent care obligations, disability or chronic illness, or circumstances beyond the control of the academic staff member, when those circumstances significantly impede the academic staff member's progress toward achieving indefinite status. It shall be presumed that a request made under this section because of responsibilities with respect to childbirth and adoption shall be approved. A request shall be made before an indefinite status review commences under subd. 1. A request for additional time because of responsibilities with respect to childbirth or adoption shall be initiated in writing by the academic staff member concerned and shall be submitted to a designated administrative officer who shall be authorized to grant a request following consultation with the academic staff member's supervisor and who shall specify the length of time for which the request is granted. Except for a request because of responsibilities with respect to childbirth and adoption, a request made because of other circumstances under this section shall be submitted to a designated administrative officer who shall be authorized to grant a request in accordance with institutional policies. A denial of a request shall be in writing and shall be based upon clear and convincing reasons. More than one request may be granted because of responsibilities with respect to childbirth or adoption. More than one request may be granted to a probationary academic staff member but the total, aggregate length of time of all requests, except for a request because of responsibilities with respect to childbirth or adoption, granted to one probationary academic staff member ordinarily shall be no more than one year.

Each institution shall develop procedures for reviewing the requests.

4. If any academic staff member has been in probationary status for more than 7 years because of one or more of the reasons set forth in sub. 2. or 3., the academic staff member shall be evaluated as if he or she had been on probationary status for 7 years.

Example: An academic staff member has been on probationary status for a total of 9 years because the academic staff was granted 2 requests under subd. 3. for one-year extensions because of the birth of 2 children. The academic staff member's record of performance shall be evaluated as if the academic staff had only 7 years to work towards achieving indefinite status, rather than as if the academic staff member had been working towards achieving indefinite status for 9 years.

(b) *Indefinite appointment.* An indefinite appointment is an appointment with permanent status and for an unlimited term, granted by the chancellor to a member of the academic staff. Such an appointment is terminable only for cause under ch. UWS 11 or for reasons of budget or program under ch. UWS 12. Such an appointment may be granted to a member of the academic staff who holds or will hold a half-time appointment or more. The proportion of time provided for in the initial indefinite appointment may not be diminished or increased without the mutual consent of the academic staff member and the institution unless the appointment is terminated or diminished under ch. UWS 11 or 12. Each institution shall adopt procedures to govern indefinite appointments including provisions for annual appraisal of performance.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; renum. (2) (a) to be (2) (a) 1. and am., cr. (2) (a) 2. to 4., Register, February, 1994, No. 458, eff. 3-1-94.

UWS 10.04 Nonrenewal of probationary academic staff appointments. (1) Each institution shall establish procedures for dealing with instances where probationary academic staff are not renewed. Nonrenewal is not a dismissal under ch. UWS 11. A nonrenewed member of the academic staff shall be provided with an opportunity to request and to receive, in writing, the reasons for nonrenewal and to receive a review of the decision upon written appeal by the academic staff member concerned within 20 days of notice of nonrenewal (25 days if notice is by first class mail and publication). The hearing body may be either an appropriate committee or a hearing examiner as designated in the institutional procedures. Such review shall be held not later than 20 days after the request, except that this time limit may be extended by mutual consent of the parties or by order of the hearing body. The burden of persuasion in such a review shall be on the nonrenewed appointee and the scope of the review shall be limited to the question of whether the decision was based in any significant degree upon one or more of the following factors, with material prejudice to the individual:

(a) Conduct, expressions, or beliefs which are constitutionally protected, or actions which are consistent with an appropriate professional code of ethics;

(b) Employment practices proscribed by applicable state or federal law; or

(c) Improper consideration of qualifications for reappointment or renewal. For purposes of this section, "improper consideration" shall be deemed to have been given to the qualifications of a staff member in question if material prejudice resulted because of any of the following:

1. The procedures required by the chancellor or board were not followed; or
2. Available data bearing materially on the quality of performance were not considered; or
3. Unfounded, arbitrary, or irrelevant assumptions of fact were made about work or conduct.

(2) Findings as to the validity of the appeal shall be reported to the official making the nonrenewal decision and to the appropriate dean or director and the chancellor.

(3) Such report may include remedies which may, without limitation because of enumeration, take the form of a reconsideration by the decision maker, a reconsideration by the decision maker under instructions from the hearing body, or a recommendation to the next higher administrative level. Cases shall be remanded for reconsideration by the decision maker in all instances unless the hearing body specifically finds that such a remand would serve no useful purpose. The hearing body shall retain jurisdiction during the pendency of any reconsideration.

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

UWS 10.05 Notice. (1) Written notice that a fixed term or probationary academic staff appointment will not be renewed shall be given to the appointee in advance of the expiration of the appointment as follows:

(a) Fixed term appointments: At least 3 months before the end of the appointment in the first 2 years and 6 months thereafter. When the letter of offer for a fixed term appointment states that renewal is not intended, no further notice of nonrenewal is required.

(b) Probationary appointments: At least 3 months before the end of the appointment in the first year; 6 months before the end of the appointment in the second year; and 12 months thereafter.

(2) If proper notice of nonrenewal is not given in accordance with sub. (1), the appointment shall be extended so that at least the required notice is provided.

(3) The policies and procedures of each institution may provide for longer notice periods for teaching members of the academic staff. Unless specifically enumerated in the institutional policies and procedures, the above provisions shall govern.

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

Attachment 7

Chapter UWS 11

DISMISSAL OF ACADEMIC STAFF FOR CAUSE

UWS 11.01	Dismissal for cause— <u>indefinite academic staff appointments.</u>	UWS 11.08	Suspension from duties.
UWS 11.02	Responsibility for charges.	UWS 11.09	Date of dismissal.
UWS 11.03	Hearing body.	UWS 11.10	Board review.
UWS 11.04	Hearing.	UWS 11.11	Dismissal for cause— <u>fixed term or probationary academic staff appointments.</u>
UWS 11.05	Adequate due process.	UWS 11.12	Dismissal for cause— <u>teaching members of the academic staff.</u>
UWS 11.06	Procedural guarantees.		
UWS 11.07	Recommendations: to the chancellor.		

UWS 11.01 Dismissal for cause—indefinite academic staff appointments. (1) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under ss. UWS 11.02 through 11.10 or for reasons of budget or program under ch. UWS 12.

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

History: Cr. Register, October, 1975, No. 236, eff. 11-1-75.

UWS 11.02 Responsibility for charges. (1) Whenever the chancellor of an institution receives an allegation which concerns an academic staff member holding an indefinite appointment which appears to be substantial and which, if true, might lead to dismissal under s. UWS 11.01, the chancellor shall request within a reasonable time that the appropriate dean or director investigate the allegation, offer to discuss it informally with the individual, and provide information of rights to which members of the academic staff are entitled under this chapter. 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 or director 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 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.

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

UWS 11.03 Hearing body. (1) The chancellor of each institution shall provide for a hearing body charged with hearing dismissal cases and making a report and recommendations under this chapter. Throughout this chapter, the term "hearing body" is used to indicate either a hearing committee or a hearing examiner as designated in the institutional procedures. This hearing body

shall operate as the hearing agent for the chancellor pursuant to s. 227.49, Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of fact and decision to the chancellor according to s. UWS 11.07.

(2) With the concurrence of the faculty and the academic staff advisory committee of each institution, the chancellor may provide that dismissal for cause of a member of the academic staff having teaching responsibilities may be heard by the hearing body specified in s. UWS 4.03. If so provided, the hearing shall be held pursuant to the provisions of ch. UWS 11.

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

UWS 11.04 Hearing. If the staff member requests a hearing within 20 days from the service of the statement of charges (25 days if notice is by first class mail and publication), such hearing shall be held not later than 20 days after the request, except that this time limit may be extended by mutual consent of the parties or by order of the hearing body. The request for a hearing shall be addressed in writing to the hearing body established pursuant to s. UWS 11.03. Service of written notice of hearing on the specific charges shall be provided at least 10 days prior to the hearing.

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

UWS 11.05 Adequate due process. (1) Each institution shall develop policies and procedures to provide for a fair hearing upon request in the event of dismissal. A fair hearing for an academic staff member whose dismissal is sought under s. UWS 11.01 shall include 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 defense;
- (c) A right to counsel and/or other representative, and to offer witnesses;
- (d) A right to confront and cross-examine adverse witnesses;
- (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. 227.47, Stats.

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

UWS 11.06 Procedural guarantees. (1) The following requirements shall also be observed:

(a) Any person who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall not be qualified to participate as a member of the hearing body;

(b) The hearing shall be closed unless the staff member under charges requests an open hearing, in which case it shall be open (see ch. 19, subch. V, Stats., Open Meeting Law);

(c) The hearing body shall not be bound by common law or statutory rules of evidence and may admit evidence having rea-

sonable 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;

(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 par. (e) 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, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of replacements equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the policies and procedures adopted by the institution;

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

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

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 staff member, may impose a lesser disciplinary action, or may find in favor of the staff member. This decision shall be deemed final unless the board, upon request of the academic staff member, grants review based on the record.

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

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 consultation with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in his or her position. Where such determination is made, the staff member may be relieved of his or her position immediately, or be assigned to another administrative unit, but his or her salary shall continue until the chancellor makes a decision as to dismissal.

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

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

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

UWS 11.10 Board review. A member of the academic staff on indefinite appointment who has been dismissed for cause by the chancellor following a hearing may appeal this action to the

board. Any appeal must be made within 30 days of the date of the decision of the chancellor to dismiss. Upon receiving an appeal the board shall review the case on the record. Following such review the board may confirm the chancellor's decision, or direct a different decision, or approve a further hearing before the board with an opportunity for filing exceptions to the hearing body's recommendations or the chancellor's decision and for oral argument on the record. If further review with opportunity for oral argument on the record is provided, this review shall be closed unless the staff member requests an open hearing. (See ch. 19, subch. V, Stats., Open Meeting Law.) 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.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

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.

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

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.

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

Attachment 8

Chapter UWS 15

LIMITED APPOINTMENTS

UWS 15.01 Limited appointments

UWS 15.01 Limited appointments. (1) A limited appointment under s. 36.17, Stats., is a special appointment to a designated administrative position. A person in this type of appointment serves at the pleasure of the authorized official who made the appointment. A member of the academic staff granted a limited appointment shall not lose existing rights to an academic staff appointment by accepting the limited appointment, and a member of the faculty granted a limited appointment shall not lose existing rights to a faculty appointment by accepting the limited appointment. Termination of a limited appointment is not a dismissal under ch. UWS 4 or 11 and is not otherwise appealable. Wherever possible 3 months' notice of termination should be given if the appointee does not hold simultaneously another university appoint-

ment.

(2) Limited appointments apply to the following positions: president, senior vice president, provost, vice president, associate vice president, assistant vice president, chancellor, vice chancellor, associate chancellor, assistant to the chancellor, assistant chancellor, associate vice chancellor, assistant vice chancellor, center system dean, secretary of the board, associate secretary of the board, assistant secretary of the board, trust officer and assistant trust officer, and such other administrative positions as the board, the president, or the chancellor determines at the time of the appointment.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; am. (1), Register, June, 1977, No. 258, eff. 7-1-77.

The University of Wisconsin System
UNCLASSIFIED PERSONNEL GUIDELINE #3

Page

SUBJECT: Unclassified Job Security

Issued: 01/01/94

PURPOSE

Section 36.09(1)(e) Wis. Stats., directs the Board of Regents to fix the "term of office" for officers, faculty, academic staff and other employees of the UW System. The Rules of the Board of Regents, set forth in Chapters UWS 3, 10, 15 and 16 of the Wisconsin Administrative Code, specify applicable job protection for faculty, academic staff, limited and other employees. The purpose of this guideline is to provide a general reference for job security provisions found in the statutes, rules and Regent policies and to codify job security policies promulgated by the System President. Academic personnel officers and employees are urged to consult the Wisconsin Administrative Code for specific rights, duties and obligations.

LIMITED APPOINTMENTS

By definition, an employee with limited appointment status serves, for an unspecified term, at the pleasure of the authorized official who made the appointment. Termination of a limited appointment is not considered a "dismissal" and is not otherwise appealable. [UWS 15.01(1)] Although by definition, there may be no job protection for those who serve as a limited appointee, a level of job security can be assigned in the form of concurrent faculty or academic staff back-up appointments.

An employee whose initial employment with the UW System is as a limited appointee, may hold simultaneously another appointment as faculty or academic staff, at the discretion of the authorized official. Wherever possible 3 months' notice of termination should be given if the appointee does not hold simultaneously another university appointment. Should a limited appointee with a faculty or academic staff back-up appointment be terminated from the limited position, the appointee has no minimum notice rights. However, the appointee has the right to assume the back-up appointment without a separation in service.

[NOTE: A limited appointee with an academic year pay basis concurrent faculty appointment, is not considered "separated" from the institution if the limited appointment is terminated between academic years, provided the faculty appointment is resumed at the start of the forthcoming academic year.]

A member of the academic staff does not lose existing rights to an academic staff appointment upon acceptance of a limited appointment. Similarly, a member of the faculty granted a limited appointment does not lose existing rights to a faculty appointment. As noted above, the return to a faculty or academic staff appointment upon termination of the limited appointment must be accomplished without a separation in service.

[NOTE: See UPG #4, Section 4.04 (5) and (6) for the policies that govern salary levels upon return to faculty and academic staff positions from limited appointments.]

A limited appointee may resign the limited appointment and ask to be returned to a faculty or academic staff appointment. Such requests should be honored as soon as possible by the authorized official. However, in the event a position is not readily available, the limited appointee may remain in the limited position until a suitable back-up position is available, or with the agreement of the limited appointee the authorized official may place the limited appointee on leave of absence until a vacancy becomes available.

3.03 **CHANCELLOR APPOINTMENTS**

A chancellor's appointment may be terminated at any time upon reasonable written notice of resignation by the chancellor to the System president.

An appointment as chancellor may be terminated by the board at any time when, in the judgment of the System president and the board, such action is deemed to be in the best interests of the chancellor's institution and of the System. A chancellor, upon relief from his/her duties, may be transferred to reassignment status for a period of up to six months without loss of salary, unless the person terminated as chancellor elects to relocate.

There shall be no maximum on the number of years which may be served by a chancellor.

If a chancellor's appointment is not renewed from one budget year to the next, he/she is eligible to receive a transitional assignment for up to twelve months at a salary rate determined under System policy or he/she may choose to relocate immediately.

Reappointment of a chancellor shall be assumed in the absence of resignation by the chancellor, or of nonrenewal or termination action by the System president and the board.

[Note: See UPG #2, Section 2.05 for additional terms and conditions of chancellor appointments.]

3.04 FACULTY APPOINTMENTS

Chapter UWS 3 Wis. Adm. Code requires the faculty of each institution, after consultation with appropriate students and with the approval of the chancellor, to develop rules relating to faculty probationary and tenure appointments.

Occasionally, the institution finds it useful and necessary to ask a faculty member to serve in an administrative capacity. Such appointments are most often to limited positions, in which case the faculty member does not lose existing rights to a faculty appointment. However, a faculty member may serve for a fixed period of time in an administrative capacity that would normally be described as an academic staff appointment. Acceptance of an academic staff appointment will not cause the faculty member to lose existing rights to a faculty appointment.

3.05 ACADEMIC STAFF APPOINTMENTS

Chapter UWS 10 Wis. Adm. Code directs each institution to develop guidelines for designating academic staff positions as fixed term, probationary or indefinite appointments.

As a result of study and consultation with chancellors and the academic staff governance units of each institution, the System President issued the following academic staff job security provisions effective September 1, 1989. Institutional policies which outline job security provisions should be consistent with these provisions and should consider distinctions based on: instructional versus non-instructional staff, source of funding, and percent of appointment. Employees with less than half-time appointments are normally considered temporary employees and not eligible for the benefits of permanent employment status.

- (1) Institutional policies shall provide to academic staff with fixed term appointments, non-renewal notice periods of at least 3 months before the end of the appointment in the first two years; at least 6 months for service of at least two years but less than seven years; at least 9 months for service of at least seven years but less than ten years; and, at least 12 months for staff who have served ten years or more. Institutional policies shall provide to academic staff on probationary

appointments, non-renewal notice periods of at least 3 months before the end of the appointment in the first year; 6 months before the end of the appointment in the second year; and, 12 months thereafter.

- (2) Institutional policies shall also specify due process protection in case of non-renewal of staff who have served for at least seven years.

[NOTE: This provision is intended to provide a uniform definition of the "substantial period of time" clause specified in s. UWS 10.03(1), Wis. Adm. Code.]

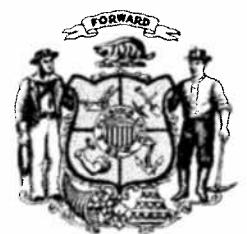
- (3) Each institution shall review annually the type of contract and terms of any academic staff member who has served more than seven years to determine the feasibility of moving such individuals to indefinite or multiple year appointments with increased job security. In making such a determination, the institution shall consider the continuing need for the position, funding source, and quality of employee's performance. Academic staff with seven years or more of service whose appointments do not provide at least two year terms shall be given the reasons upon request. Academic staff with ten years or more of service whose appointments do not provide at least three-year terms shall be given the reasons upon request.
- (4) Every two years, UW System Administration shall audit a sample of academic staff appointments for compliance with existing policies governing appointment types, notice periods for non-renewal, and related conditions of job security.

3.06 OTHER APPOINTMENTS

State statutes permit the Board to make or authorize fixed term appointments for student assistants and employees in training. In general, such appointments are intended to allow a person to acquire additional training or experience in his/her field of specialization. As such, these appointments are not career choices per se. Instead, such appointments are provided to enhance the career options in other positions.



WISCONSIN STATE LEGISLATURE



(4) Category D

Compensation Category D refers to salary structures applicable to the Faculty, Employees-in-Training, Student Staff and Other Special Use title groups. Although the UW System establishes minima salary levels for ranked faculty, each institution is free to establish a salary structure that exceeds those minima. Stipend rates for non-represented graduate assistants are established at the institution.

4.04 GENERAL SALARY ADMINISTRATION GUIDELINES

(1) Delegation of Personnel Transaction Authority

Pursuant to Regent Policy Document 87-15 (revised June 9, 2000), the President has received delegated authority from the Board of Regents to approve personnel transactions involving positions in which the salary does not exceed 75% of the UW System President's salary. On June 27, 2000, the System President extended this delegated authority to the Chancellors to the extent that Chancellors may approve personnel transactions involving positions in which the salary does not exceed 75% of the President's salary.

Personnel transactions involving academic positions (e.g., Deans, Academic Program Directors, and ranked faculty) in which the salary exceeds 75% of the UW System President's salary, should be submitted to the System Office of Academic Affairs for review and forwarding to the Board of Regents Education Committee for final approval.

The Board of Regents shall establish the salary range for new Senior/Vice Presidents and Provosts/Vice Chancellors (Deputy) as provided in Regent Policy 94-4 through approval of the authorization to recruit. The President is delegated authority to set the salary at the time of hire within the salary range approved by the Board. Moreover, the President is delegated to authority to make a base salary adjustment up to a specified level within 6 to 9 months of the date of hire.

Personnel transactions involving administrative positions (e.g., Administrative Director titles) in which the salary exceeds 75% of the UW System President's salary, should be submitted to the System Office of Human Resources for review and forwarding to the Board of Regents Business and Finance Committee for final approval.

(2) Authority to Establish Salaries Within Pay Ranges

The Chancellors shall have the flexibility to set salaries within the established pay range for the unclassified position title, subject to the limitations noted in Section 4.04 (1) above. Salary range dollar values are provided in annual pay plan instructions issued by the System Office of Human Resources. Although pay range dollar values may not be modified by the institutions, the institutions may establish higher salary minima for ranked faculty and instructional and research academic staff.

(3) Salary Range Limits Must be Honored

It is the responsibility of the President to maintain the integrity of the unclassified title and salary range system. Therefore, no salary rate may be established outside of the salary range minima and maxima dollar values for the title assigned.

- (a) In the event of a promotion or job reclassification, the salary rate must be equal to or greater than the salary range minima for the new title.
- (b) In the event an employee accepts a position assigned to a lower salary range and the employee's current salary is above the new salary range maxima, the new salary shall be set at a rate not exceeding the new salary range maxima.

(4) Extraordinary Salary Ranges

Although the unclassified salary range structure is designed to accommodate general market demands for academic staff, there are extreme market conditions for certain positions which require the approval of an extraordinary salary range in order to address documented recruitment and retention needs. In the event the institution finds evidence, by virtue of conducting a market survey, that an official salary range does not adequately capture the competitive market, the institution should submit published or developed survey data on salaries paid for comparable positions in the external market, to the UW System Office of Human Resources for review and approval of an extraordinary salary range.

(5) Faculty Member in an Administrative Position

Except as required by s. 36.13(4)(c) Wis. Stats. (unranked, pre-merger faculty), faculty members who assume an administrative position for more than 50% time must be assigned to the appropriate administrative salary range for that position, and the salary for such appointment shall be within the salary range limits. Under UW System policy when a ranked faculty member leaves an administrative Limited appointment to return to his/her faculty position, the salary upon return to the faculty position shall be negotiated within a range bounded by the average salary of all faculty of the same rank within the tenure home department (or functional equivalent) and 82% of the administrative salary. Negotiated salaries outside of this range require the advance approval of the System President. Such requests should be sent to the System Office of Academic Affairs, which will consider the request on behalf of the System President.

(6) Academic Staff Member in a Limited Position

An academic staff member who assumes a limited appointment for more than 50% time must be assigned to the appropriate administrative salary range for that position, and the salary for such appointment shall be within the salary range limits. When an academic staff member leaves a limited position and the concurrent or back-up academic staff appointment does not specify a title and salary range entitlement, (i.e. an Academic Staff Z99 appointment) the title and salary range shall be determined based on the functions to be performed in the academic staff appointment, and the salary upon return to an academic staff position shall be established within the salary range limits.

(7) Acting Appointment Salaries for Academic Administrators

Because Academic Administrators serve at the executive/policy making level, it is extremely important for an acting appointee to maintain leadership continuity during the search and screen process. The salary offered to an individual to serve on an acting basis can be an important factor in securing the temporary services of a highly qualified person.

UPG #5 identifies those academic administrator titles and/or salary thresholds which require the prior approval of either the Regents, the System President or the Chancellor before an appointment

can be made. The delegated authority for personnel transactions outlined in UPG #5 applies to acting appointments.

Modified President and Chancellor titles are subject to salary range assignment pursuant to s. 20.923 (4g), and (5), Wis. Stats. As a result, the salary established for an acting appointee cannot be less than the salary range minimum or more than the maximum of the applicable salary range for the position. Further, the following human resource compensation principles should be considered in setting the salary for acting appointments.

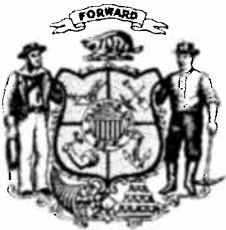
- (a) Normally the salary for an acting appointee should be set at a point less than the position will be paid when filled on a permanent basis.
- (b) Unless special market or other unusual conditions exist, the compensation level for an acting assignment would typically be below that of the former incumbent in the position.
- (c) An evaluation should be made to ensure that, to the extent possible, the salary offered for an acting assignment does not create inequities with comparable positions both within and between institutions in the UW System.
- (d) Generally, if the acting appointment includes significant increased responsibility, the person would be provided a minimum of a 5% increase. The higher base salary applies only during the period of the increased responsibility.
- (e) When a permanent appointment is made, the acting appointee can expect to be returned to his/her former position at a salary consistent with the salary the person had before assuming the acting appointment, plus any increases that the person would have received but for accepting the acting responsibility.

4.05 TIMING OF SALARY ADJUSTMENTS

- (1) In accordance with s. 36.09(1)(j) Wis. Stats., the Board of Regents must set salaries and their effective dates prior to July 1 of each fiscal year for the next fiscal year. Accordingly, salary rate changes for all continuing employees and positions except selected categories specifically excluded by the Chancellors [sec 4.05 (2)] should be included in the annual budget prepared for consideration by the Board. New salary rates should be effective on the standard dates of July 1 or the beginning of the academic year, provided the necessary appropriations law has been enacted.
- (2) Chancellors may authorize different pay increase effective dates for specific categories of personnel which cannot reasonably be made to conform to standard appointment periods. e.g., fixed term appointees supported on gifts, grants, or contracts with anniversary dates that do not coincide with July 1 or the beginning of the academic year, non-continuing appointments for time periods shorter than the fiscal year or academic year, and coaches on sport season-oriented year appointments. However, state pay plan increases for these non-standard contract personnel should not exceed the state-approved compensation plan percentage. The Chancellor should maintain sufficient reserves within the state compensation plan percentage to accommodate compensation plan increases that could not be accomplished in the annual budget.
- (3) If necessary, adjustments governed by 4.06 may take effect at appropriate times throughout the fiscal year consistent with the delegation of authority limits specified in 4.04(1). However, to the extent possible, they should be included in the annual budget and their timing should be regularized.



WISCONSIN STATE LEGISLATURE



MEMORANDUMCLIENT-MATTER NUMBER
999999-9999

TO: David Walsh

FROM: Michael H. Auen

DATE: September 1, 2005

RE: Arrest and Conviction Discrimination Statute

You asked that I provide you with some information on the provisions of the Wisconsin Fair Employment Act that prohibit arrest and conviction record discrimination.

1. The Statutory Provisions.

The Wisconsin Fair Employment Act, Wis. Stats § 111.31 *et seq.* prohibits discrimination on various grounds—race, sex, creed, color, disability, marital status, national origin,¹ *arrest record*, *conviction record*, membership in the national guard or state defense forces, or the use or nonuse of lawful products off the employer's premises during non working hours.²

The statute defines arrest and conviction record discrimination as:

(1) (a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other

¹ From a budget and economics perspective, it makes little sense for the State to duplicate the federal laws on employment discrimination. While the EEOC and the Equal Rights Division of the Department of Workforce Development have a work sharing agreement which is designed to avoid duplication of effort, the State is still employing people to deal with discrimination claims that the federal government has an agency to deal with. A change that said the State would not exercise jurisdiction over any employer covered by federal law as to any alleged discrimination covered by Title VII, the ADEA, or the ADA should save money and resources.

² This lawful products provision may be opaque to you. It was designed to prohibit the discharge of those who smoke cigarettes after hours, but, of course, has a much broader sweep.

individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of an arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

2. [Relating to bonding]

(cg.) [Relating to private detectives]

(cm) [Relating to installers of burglar alarms]

(cs) [Relating to alcohol licenses of vending machines]

(cv) [Relating to civil service and draft registration]

Wis. Stats. § 111.335. (Emphasis added)

There is also a definition of arrest record:

“Arrest record” includes, but is not limited to, information indicating that an individual has been questioned, apprehended, taken into custody or

detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

Wis. Stat. § 111.32(1).

There is a similar definition for “conviction record.”

An employer may *suspend* an employee who is arrested for a crime which involves circumstances substantially related to the circumstances of the particular job. An employee cannot be discharged based on an arrest record, even if the circumstances of the charge are substantially related to his or her job.

2. Labor and Industry Review Commission.

The principal interpreter of the WFEA is the Labor and Industry Review Commission (LIRC). While there is judicial review of LIRC decisions, the courts are required to act with deference to almost all LIRC decisions. Only when LIRC does not have experience with a particular statute and is writing on a clean slate or LIRC’s interpretation conflicts with other statutes, do the courts have the ability to use a review standard that does not involve substantial deference to LIRC.

LIRC has interpreted the WFEA’s provisions on arrest and conviction record discrimination to prohibit an employer from acting on information obtained by law enforcement authorities in connection with their arrest of an individual. If an employer is going to act on the conduct underlying the arrest, it must do so based on an independent investigation. •

Consider *Bettors v. Kimberly Area Schools*, ERD Case No. 200300554 (LIRC 7-30-04). The school discharged Bettors from his maintenance job after discovering his drug use, his lies about sick leave and his arrests for drug possession and sale. He sued claiming that his discharge was based on his arrest record. The school defended saying that the discharge was based on its own investigation of the facts.³ This defense was recognized

³ Bettors also protested his discharge under the union contract and his case was taken to an arbitrator, who ruled the discharge was proper. Based on this award the ALJ, without a hearing, dismissed the arrest record complaint. LIRC reversed and declined to give the arbitrator’s award preclusive effect on two different grounds. First, it decided that labor arbitration awards should not be given preclusive effect as to discrimination claims. That part of the decision, though perhaps contrary to first impressions, is not inconsistent with the preclusive effect given labor arbitration decisions in some private sector settings. Second, LIRC decided that the arbitrator considered information provided by arresting authorities and that was inconsistent with the WFEA.

in *Onalaska v. LIRC*, 120 Wis. 2d 363, 354 N.W. 2d 223 (Ct. App. 1984) and is called the *Onalaska* defense.

In the *Besters* case LIRC describes what constitutes an independent investigation. Prior LIRC decisions had said that an admission by the employee, a good faith belief that the employee engaged in the misconduct that arises from something other than the fact of arrest, statements by witnesses, or observing the same conduct the police see are independent sources of information and do not indicate the employer was relying on the arrest in making a decision. *Besters* says:

... the commission chooses not to be guided by *Ponto* and *Springer*. As the *Onalaska* decision notes, under the WFEA the term "arrest record" includes, but is not limited to "information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony Things such as police reports from the arresting authority, the criminal complaint and statements made by or other information provided by the arresting or prosecuting authority, are all part and parcel of the "arrest record" itself. The approach described in [two prior LIRC cases] pursuant to which the question to be resolved is whether the employer's conclusion that the employee engaged in unacceptable behavior was based on "information of the arrest and of the arresting authorities", is in the commission's view the proper approach.

Besters at p 8.

The *Besters* case was remanded for a full hearing to determine if the school's decision (its subjective motivation) to terminate the employee was based on the information from the arresting authorities or independent sources. One problem with this approach, of course, is that almost all employees who are arrested and have their arrest publicized or disclosed can now get a full hearing by simply alleging that the fact or arrest or information about the arrest was considered by the employer.

In my opinion, this makes for an easy way for an employee to avoid or delay discharge. Raising the claim of arrest record discrimination forces the employer to continue the employee is a suspension status if it wants to avoid a full hearing over its motivation before the LIRC. The practical and economically motivated employer will wait for the conviction and discharge then. If there is no conviction, there will be other problems. The failure to act

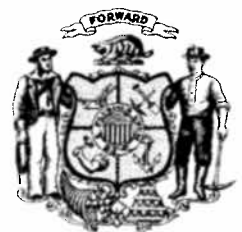
promptly on the misconduct and waiting for the conviction status will likely be cited by LIRC as evidence that the discharge is really motivated by the arrest and not the misconduct.

3. Another Oddity.

There is one other oddity of this statute that you should know about. The definition of “arrest record” is so broad that being arrested for driving while intoxicated under Wis. Stat. § 346.63 is covered as an “arrest record,” but is not considered a “criminal charge” under the statute for purposes of being able to lawfully suspend an employee. The results are predictable. An employee arrested for OMVWI is considered to have an arrest record, but the employer cannot suspend him from his driving job because the ‘affirmative defense’ allowing suspension only applies to a criminal charge and first offense OMVWI is a civil offense. Amazing logic for a statute and a state purportedly interested in dealing seriously with drunk driving. See *Gustafson v. C.J.W. Inc.* ERD Case No. 865041 (LIRC 1989)



WISCONSIN STATE LEGISLATURE



13.29 LEGISLATIVE BRANCH

(2) The legislature may adopt rules to govern such examinations. All proceedings, including all questions and answers, shall be fully recorded and a copy thereof shall be transmitted to the governor within 30 days after the close of the examination.

History: 1983 a. 36 s. 96 (2).

13.30 State officers; removal by legislature. Any appointive state officer after being examined under ss. 13.28 and 13.29 may be removed by the legislature by joint resolution adopted in each house by a majority of the members elected to such house. The power to remove appointive state officers provided in this section is additional to and shall not be construed as destroying the right of removal by other persons.

13.31 Witnesses; how subpoenaed. The attendance of witnesses before any committee of the legislature, or of either house thereof, appointed to investigate any subject matter, may be procured by subpoenas signed by the presiding officer and chief clerk of the senate or assembly. Such subpoenas shall state when and where, and before whom, the witness is required to appear, and may require such attendance forthwith or on a future day named and the production of books, records, documents and papers therein to be designated, and may also require any officer of any corporation or limited liability company, or other person having the custody of the keys, books, records, documents or papers of any such business entity, to produce the same before such committee. Such subpoenas may be served by any person and shall be returned to the chief clerk of the house which issued the same as subpoenas from the circuit court are served and returned.

History: 1993 a. 112.

13.32 Summary process; custody of witness. (1) Upon the return of a subpoena issued under s. 13.31, duly served, and upon filing with the presiding officer of the house from which the subpoena issued a certificate of the chairperson of the committee certifying that any person named therein failed or neglected to appear before the committee in obedience to the mandate of such subpoena, summary process to compel the attendance of such person shall be issued.

(2) Such summary process shall be signed by the presiding officer and chief clerk of the house which issued the subpoena, and shall be directed to the sergeant at arms thereof commanding the sergeant at arms "in the name of the state of Wisconsin" to take the body of the person so failing to attend, naming that person, and bring the person forthwith before the house whose subpoena the person disobeyed. When so arrested the person shall be taken before the committee desiring to examine the person as a witness, or to obtain from the person books, records, documents or papers for their use as evidence, and when before such committee such person shall testify as to the matters concerning which the person is interrogated.

(3) When such person is not on examination before such committee the person shall remain in the custody of the sergeant at arms or in the custody of some person specially deputed for that purpose; and the officer having charge of the person shall from time to time take the person before such committee until the chairperson of the committee certifies that the committee does not wish to examine such person further. Thereupon such witness shall be taken before the house which issued the summary process and that house shall order the release of the witness, or may proceed to punish the witness for any contempt of such house in not complying with the requirement of this chapter or of any writ issued or served as herein provided.

History: 1991 a. 316; 1993 a. 184.

13.33 Service of process. Either house ordering any summary process may also direct the sergeant at arms to specially depute some competent person to execute the same, and such deputation shall be endorsed on such process in writing over the sig-

nature of the sergeant at arms to whom the same is directed. The person so deputed shall have the same power as the sergeant at arms in respect thereto, and shall execute the same according to the mandate thereof, and for that purpose the sergeant at arms or the deputy may call to his or her aid the power of the county wherein such writ is to be executed the same as the sheriff of such county could do for the purpose of arresting a person charged with crime under process issued by a court of competent jurisdiction; and any sergeant at arms having any person in custody by virtue of any such summary process may depute any other person to have charge of the person so in custody, and the person so deputed shall have the same power over such person as is conferred upon the sergeant at arms.

History: 1991 a. 316.

13.34 Refusal to testify. Every refusal to testify or answer any question, or to produce keys, books, records, documents or papers before any committee included within s. 13.31 shall be forthwith certified to the proper house by the chairperson of such committee. Such certificate shall be transmitted, and the person so refusing taken, by the sergeant at arms or an assistant to the sergeant at arms, before such house to be dealt with according to law.

History: 1991 a. 316; 1993 a. 184.

13.35 Liability of witness. (1) No person who is required to testify before either house of the legislature or a committee thereof, or joint committee of the 2 houses, and is examined and so testifies, shall be held to answer criminally in any court or be subject to any penalty or forfeiture for any fact or act touching which the person is required to testify and as to which the person has been examined and has testified, and no testimony so given nor any paper, document or record produced by any such person before either house of the legislature or any such committee shall be competent testimony or be used in any trial or criminal proceeding against such person in any court, except upon a prosecution for perjury committed in giving such testimony; and no witness shall be allowed to refuse to testify to any fact, or to produce any papers, documents or records touching which the person is examined before either house or any such committee, for the reason that the testimony touching such fact, or the production of such papers, documents or records may tend to disgrace the person or otherwise render the person infamous.

(2) The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

History: 1989 a. 122, 359.

13.36 Witness fees. The compensation of all witnesses who are subpoenaed and appear pursuant to s. 13.31 shall be \$2 for each day's attendance and 10 cents per mile, one way, for travel to attend as such witness. The department of administration shall audit the accounts of such witnesses upon the certificate of the chairperson of the committee before which any such witness has appeared, stating the number of days' attendance and the distance the witness has traveled, and the accounts so audited shall be paid out of the state treasury and charged to the appropriation for the legislature.

History: 1991 a. 316; 1993 a. 184.

13.40 Limitation on state appropriations from general purpose revenue. (1) In this section:

(ad) "Compensation reserves" means the total estimated amount designated as compensation reserves for a given fiscal year as shown in the schedule under s. 20.005 (1) published in the biennial budget act or the modified total amount of compensation reserves for that fiscal year specified in any other act.

(am) "Fiscal biennium" means a 2-year period beginning on July 1 of an odd-numbered year.

(b) "General purpose revenue" has the meaning given for "general purpose revenues" in s. 20.001 (2) (a).

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