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☞ Details: Proposed Audit: Personnel Policies and 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)

1/15/05 - Regent Disciplinary Mtg.

- Report to Regents in Feb.

- Pat Brady

- made minor adj. to draft based on discussion
 - ↳ draft 1

- Draft 2

- ↳ 2nd tier - not just cause, but lower non-criminal behavior
 - ↳ 4.09 (2) a (2)

? Do we want to use Emerg. Rules procedure.

* Mike Spector

- Draft 1

- 4.09 (2) - 2 components

- ↳ 1) convicted

- 2) not yet convicted - ~~accused~~ charged

- ↳ make clear not a hearing but a mtg 4.09 (2) b

* Walter Sickel

- need to give more thought to pending cases

- ↳ accused will likely not want to comment on a pending charge - 5th amendment

* Russ

- should have New Section - not in Chp. 4

- ↳ Walter, Peggy, Brent, Mike all agree s/B separate

Walter - must meet all 3

- 1) filong - underlying behavior - not necessarily charged

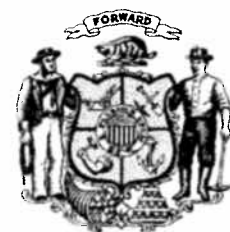
- 2) physical safety of others

- 3) undermines integrity of UW

- pg 2 - 2nd tier - Walter goes - tweak



WISCONSIN STATE LEGISLATURE



-Mike Supports

DRAFT #2--12/12/05

Proposed Amendments to Chapter UWS 4, Wisconsin Administrative Code
Procedures for Dismissal of Faculty

UWS 4.01 Dismissal for cause. Amend by adding a new paragraph (3):

(3) In this chapter, "just cause" includes, but is not limited to, conviction of those crimes identified in s. UWS 4.11(2).

UWS 4.09 Suspension from duties. Amend as follows (new material is underlined):

(1) Except as provided in par. (2), 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.

(2) (a) The provost may suspend a faculty member from duties without pay pending the final decision as to his/her dismissal where:

Should
suspend
& expedite
1. The faculty member has been charged with or convicted of a crime listed in UWS 4.11(2), and the provost finds that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged, or that the faculty member is unable to report for work due to incarceration, conditions of bail or similar cause; or

may
2. The provost finds that there is a substantial likelihood that the faculty member has engaged in behavior that poses a substantial risk to the safety of others.

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

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

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

(New section)

UWS 4.11 Declaration of policy; criminal misconduct; reporting responsibility; expedited dismissal process. (1) **DECLARATION OF POLICY.** University faculty members have the primary responsibility for advancing the university's missions of teaching, research and public service. The advancement of these missions requires public trust in the integrity of the institution and in all members of the university community. Engaging in criminal activity or other behavior that reflects adversely on a faculty member's honesty or trustworthiness, or that poses a substantial risk to the safety of others, undermines public trust in the university and impairs the university's ability to fulfill its missions.

(2) **CRIMINAL MISCONDUCT.** Recognizing the importance of maintaining the public trust and ensuring the fulfillment of the university's missions, the board of regents adopts the following process for the prompt resolution of situations in which a faculty member is charged with or convicted of a crime under the following statutes: (a) Any crime defined in ch. 940, Stats. (crimes against life and bodily security); (b) s. 943.02, Stats. (arson); (c) s. 943.10, Stats. (burglary); (d) s. 943.23(1g), Stats. (taking a vehicle by force); (e) s. 943.32, Stats. (robbery); (f) s. 948.02(1) or (2), 948.025(1) or (1m), 948.06, 948.07(1), (2), (3), or (4), or 948.075 (serious child sex offenses).

(3) **REPORTING RESPONSIBILITY.** Any faculty member who is charged with or convicted of a crime listed in par. (2) shall immediately report the fact of the charge or conviction to the provost.

(4) **EXPEDITED PROCESS.** (a) Whenever the provost of an institution within the university of Wisconsin system receives a report under par. (3) or other information that a faculty member has been charged with or convicted of a crime listed under par. (2), or where the provost has determined to impose a suspension without pay pending the final decision as to dismissal under s. 4.09(2)(a)2., the provost shall:

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

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

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

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

1. If the provost decides to seek dismissal of the faculty member, the provost shall file charges within two working days of reaching the decision.

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

(d) If charges seeking dismissal are filed under sub. (c)1., the faculty member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under this chapter. The hearing shall provide the procedural guarantees enumerated under s. UWS 4.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 14 working days of the filing of charges.

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

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

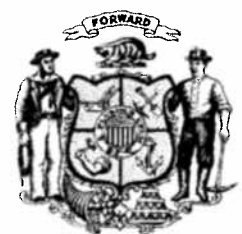
2. Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the board at its option grants a review on the record.

(f) Upon receipt of the chancellor's recommendation, the board shall review the record before the institutional hearing committee, and may offer an opportunity for filing exceptions to the recommendation, or for oral argument. The board shall issue its decision on the matter within 10 working days of receipt of the chancellor's recommendation.

(g) If a faculty member whose dismissal is sought under sub. (c)1. does not request a hearing, the board shall take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.



WISCONSIN STATE LEGISLATURE



DRAFT #1--12/12/05

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Procedures for Dismissal of Faculty

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(2) (a) The provost may suspend a faculty member who is charged with or convicted of a crime listed in UWS 4.11(2) from duties without pay, if the provost finds that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged or where the faculty member is unable to report for work due to incarceration, conditions of bail or similar cause.

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

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

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

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(b) The investigation shall be completed and a report filed with the provost not later than ten working days following the time allowed for the faculty member to request an

investigator's disqualification, or the naming of a different investigator, whichever is later.

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

1. If the provost decides to seek dismissal of the faculty member, the provost shall file charges within two working days of reaching the decision.

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

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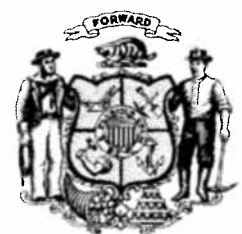
3. *Wait until info is avail. or disposition of criminal case.*

(f) Upon receipt of the chancellor's recommendation, the board shall review the record before the institutional hearing committee, and may offer an opportunity for filing exceptions to the recommendation, or for oral argument. The board shall issue its decision on the matter within 10 working days of receipt of the chancellor's recommendation.

(g) If a faculty member whose dismissal is sought under sub. (c)1. does not request a hearing, the board shall take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.



WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY
PROCESS

Notice of Public Meeting

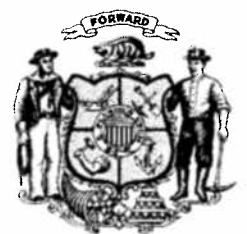
January 25, 2006
1:30 p.m.
Van Hise Hall, Room 1511
1220 Linden Drive
Madison, Wisconsin

A G E N D A

1. Approval of the minutes of the December 15, 2005 meeting of the Committee
2. Consideration of possible changes regarding faculty/academic staff disciplinary process
3. Discussion of next steps
4. Adjournment



WISCONSIN STATE LEGISLATURE





Board of Regents

1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706-1559
(608) 262-2324
(608) 262-5739 Fax
website: <http://www.wisconsin.edu>

December 21, 2005

Senator Carol Roessler
8 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Representative Suzanne Jeskewitz
314 North, State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Audit Committee Co-Chairs:

At the request of Regent President David Walsh and UW System President Kevin Reilly, I am pleased to provide a brief progress report on the activities of the Special Regents' Committee regarding the Faculty and Academic Staff Disciplinary Process.

Our Committee has met four times since November, and we are making steady progress on several proposed reforms to the disciplinary process applicable if a UW System employee is charged with, or convicted of, certain enumerated felonies or any crime that endangers the safety of the university community or the integrity and legitimacy of the institution. These proposals include:

- Self-reporting of such charges or convictions
- Suspension without pay in certain instances
- Expedited, "due process" decision-making in certain situations, and
- Harmonizing "just cause" protection for tenured employees with the changes under consideration.

Our current focus is the creation of various new UW System administrative rules governing personnel policies and procedures. Our next steps are to circulate a revised draft of the proposed administrative rule changes to our Committee prior to its late January meeting and to report the Committee's final recommended changes to the Board of Regents in time for consideration at the Board's regularly scheduled February 10 meeting. I will transmit the final recommended changes to you at the same time they go to the Board.

The proposed final version of any rule changes adopted by the Board will also be sent to faculty, staff and student groups for their consideration and comment. Finally, the proposed new administrative rules approved by the Board, after consideration of the comments of the shared governance groups, will be submitted to the legislature as part of the rule making process.

The Committee very much appreciates the significant assistance of Legislative Council attorneys Russ Whitesel, and Mary Mathias, Rep. Jeskewitz's aide Pam Matthews, and other audit and legislative staff who have participated in our meetings.

Please let me know if you have questions about any aspect of this letter.

Sincerely,

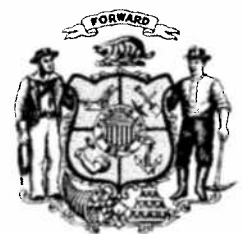
A handwritten signature in black ink, appearing to read "Michael J. Spector".

Michael J. Spector
Chair, Regent Committee on Faculty and Academic Staff Disciplinary Procedures

cc: Audit Committee Members
Legislative Leadership
Higher Education Committees
Janice Mueller, State Auditor
Board of Regents
President Reilly
Chancellors



WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY PROCESS

Minutes of the Meeting

December 15, 2005
10:20 a.m.
Pyle Center, Room 220
702 Langdon Street
Madison, Wisconsin

Committee Members Present: Regent Michael Spector, Chair, General Counsel Patricia Brady, Professor Walter Dickey, Chancellor David Markee, Regent Peggy Rosenzweig, and Regent Brent Smith

Committee Members Unable to Attend: None

Others Present: Scott Sager, Legislative Audit Bureau; Bill Steffenhagen, Academic Staff Professionals Representation Organization; Russ Whitesel, Legislative Council Senior Staff Attorney; Pam Matthews, Assistant to Representative Sue Jeskewitz; Richard Schauer, The Association of UW Professionals; Kevin Kniffin, American Federation of Teachers; and Margaret Lewis, UW Associate Vice President

Regent Spector began the meeting by reporting that he had given a status report on the committee's progress to the Board of Regents at its December 9th meeting.

General Counsel Brady distributed two draft documents on possible amendments to Chapter UWS 4, *Wisconsin Administrative Code*, that she had prepared in response to discussion at the last meeting. Both drafts identified "days" as "working days" throughout the documents and added serious child sex offenses to the definition of Criminal Misconduct in s.UWS 4.11(2).

Draft #2 also incorporated as a second tier of misconduct that could warrant suspension without pay and the expedited disciplinary process cases in which the "provost finds that there is a substantial likelihood that the faculty member has engaged in behavior that poses a substantial risk to the safety of others."

As pending questions, Ms. Brady listed the following:

- o Crimes to be included in the list of serious crimes set forth in s.4.11(2)
- o Basis for removing an investigator
- o Whether to invoke the emergency rulemaking process to implement the proposed changes.

With regard to Draft #1, Regent Spector suggested that in s.4.09(2)(a) the wording be changed to provide that, when an employee is convicted of a crime identified in s.4.11(2), the provost would not need to make a finding of "substantial likelihood" and the person could be suspended without pay immediately. If the person is charged with the crime, but not yet convicted, the provost would need to find that there is a substantial likelihood that the faculty member engaged in the conduct as alleged in order to impose suspension without pay.

In s.4.09(2)(b), he suggested that the word "hearing" be changed to "meeting".

Professor Dickey agreed and suggested that, when criminal charges are pending, the faculty committee, provost, and chancellor be given the option to continue the matter until further information becomes available. In that regard, he noted that prosecutors frequently do not allow witnesses to talk with university investigators while charges are pending. The person charged with the crime could be suspended without pay pending the outcome of the case.

Ms. Brady agreed, noting that in many cases information has been withheld because law enforcement was unwilling to risk compromising their prosecution of a case in order to assist in the university's investigation.

In response to a question by Mr. Whitesel, Professor Dickey indicated that he had asked for alternative drafts for the committee's consideration so that one of the drafts could include a second category of crimes, in addition to the ones that would constitute just cause for dismissal per se, for which suspension without pay and an expedited disciplinary process could be invoked.

Mr. Whitesel questioned the need for a "per se" category, suggesting instead a single trigger for possible use of the expedited disciplinary process, such as charge or conviction of a felony.

Professor Dickey explained that the standard applied for dismissal in the two categories would be different. While certain crimes would constitute just cause for dismissal per se, in other cases just cause for dismissal would have to be found.

Regent Rosenzweig and Ms. Brady felt that inclusion of all felonies would be overly broad.

Ms. Matthews cautioned that the rule making process is cumbersome and suggested that it would be helpful to have some flexibility in the definition of crimes that could warrant suspension without pay and the expedited process in the event that some serious crime might be omitted in formulating the definition.

With regard to the second tier of crimes, Professor Dickey noted that the intent was to make crimes that are not in the "per se" category but that might constitute a threat to safety subject to suspension without pay and the expedited disciplinary process. The challenge, he pointed out, would be to draft language in such a way that free speech would not be threatened. If any felony would permit suspension without pay and use of the expedited process, he cautioned that guidelines would be necessary to advise decision makers about when to invoke those measures.

Regent Smith expressed support for the language in draft #2.

In response to a question by Regent Spector, Mr. Whitesel explained that there could be one disciplinary process with a range of options, including the expedited process. Professor Dickey added that the expedited process would be available for charge or conviction of a felony, but it must be used for heinous felonies. It could also be used for other crimes that pose a danger to the community.

Regent Spector thought that specifying the heinous crimes would help to assure faculty that suspension without pay and the expedited process would not apply to minor offenses.

Mr. Whitesel suggested drafting a separate *Administrative Code* chapter for the expedited process, and there was agreement with that recommendation.

With regard to the second category of felonies, Regent Spector noted that there had been discussion of including crimes that threaten the credibility of and trust in the university, as well as those that pose a risk to safety. He noted, however, that such a section would need to be written carefully so that it would not open the door to possible abuse.

Regent Rosenzweig asked how one could articulate what would fit into this third category.

In response, Professor Dickey suggested that there could be two main categories. The first would be heinous crimes that constitute just cause for dismissal per se. In the second category would be crimes that are felonies and that threaten the safety of the community or that undermine the legitimacy of the university. It could be specified that all three criteria would need to be met for crimes in the second category to warrant the expedited process and possible suspension without pay.

Ms. Matthews suggested that the rule provide that "per se" heinous crimes shall warrant suspension without pay and the expedited process, and that second category crimes also may warrant those actions.

Regent Rosenzweig asked if faculty and staff representatives at the meeting had any comments on these suggestions.

Professor Schauer said that he did not want to react at that time because of lack of clarity about the definition of category two crimes, as well as lack of clarity about the term "substantial likelihood" and the powers of the provost.

None of the other observers had comments at this point.

Professor Dickey suggested that he, Ms. Brady, and Mr. Whitesel constitute a subcommittee to prepare draft rules that could be considered by the committee in January and that would be circulated in advance of the meeting. The committee's recommendations could be brought to the Board of Regents in February.

There was agreement with that suggestion.

Chancellor Markee expressed concern about whether a second category would be needed. He felt that such crimes could be handled through the existing process.

As examples of crimes that might fit into the second category, Professor Dickey cited stalking that could be pose a threat to safety and stealing in amounts and manners that could damage the legitimacy of the university.

Mr. Whitesel noted that the expedited process would be for exceptional crimes. Most would be handled through the regular disciplinary process.

Chancellor Markee suggested that, in order to trigger availability of the expedited process, there should at least be a criminal charge, not just a claim that a crime had been committed.

Professor Dickey did not believe that the expedited process would be used often because crimes would need to be heinous or to meet specific standards in order to trigger it.

Regent Rosenzweig and Regent Spector commented that crimes such as grand larceny and embezzlement would among those for which the public might reasonably expect suspension without pay.

In that regard, Mr. Whitesel suggested that the standard for triggering availability of the expedited process and suspension without pay for crimes in the second category might be that the crimes are felonies and either pose a risk to safety or threaten the legitimacy of the university.

Professor Dickey indicated that alternative language could be presented for the committee's action at the next meeting.

In response to a question by Ms. Lewis regarding the committee's proposed time line, Regent Spector said that his intention was to bring recommendations to the Board in February and then take the proposed rules to the governance groups for input.

It was agreed that the committee would meet again on January 25th.

Regent Spector advised the committee that he would send a letter to the Co-Chairs of the Joint Audit Committee, the leadership of both houses of the Legislature, and the Chairs of the Higher Education Committees advising them of the committee's progress.

As a revision to the minutes of the November 29th meeting, the words "at which time" were replaced by the word "and" in the sixth line of the second paragraph on page 2. With that change, the minutes were approved, upon motion by Ms. Brady, seconded by Professor Dickey.

With regard to whether the emergency rule-making process should be invoked with respect to the proposed changes, Ms. Brady noted the importance of first obtaining shared governance input, and Regent Rosenzweig asked that the committee continue to consider this process as a possibility.

In response to a question by Mr. Whitesel as to the Regent role in the expedited process, Ms. Brady indicated that the Board of Regents must act on dismissal recommendations and that hearing from the parties is important in making that decision.

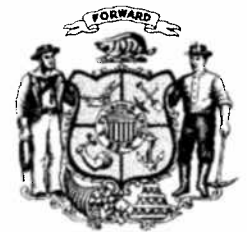
Regent Rosenzweig added that it should be the full Board's responsibility to meet and take action on these important matters.

Discussion concluded and the meeting was adjourned at 11:30 a.m.

Judith Temby, Secretary



WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE ON FACULTY/ACADEMIC STAFF DISCIPLINARY PROCESS

Minutes of the Meeting

January 25, 2006
1:30 p.m.

Committee members present: Regent Michael Spector, Chair; General Counsel Pat Brady, Professor Walter Dickey, Chancellor David Markee, Regent Peggy Rosenzweig, Regent Brent Smith, Regent President David Walsh

Committee members unable to attend: None

Others in attendance: Mary Matthias, Senior Staff Attorney for the Legislative Council; Scott Sager, Legislative Audit Bureau, David Musolf, UW-Madison Secretary of the Faculty, Kevin Kniffin, American Federation of Teachers; David Nack, Vice President of the United Faculty and Academic Staff; Corliss Olson, UW-Extension School for Workers; Richard Schauer, American Federation of Teachers; Steve Lund, UW-Madison Director of Academic Personnel; and Bill Steffenhagen, Academic Staff Professionals Representation Organization

Upon motion by Regent Rosenzweig, seconded by Professor Dickey, the minutes of the December 15, 2005 meeting were approved as distributed.

Regent Spector noted that he had advised the Board of Regents in December that the committee would report at the February board meeting. The intent at this meeting was to consider proposed administrative rule language to present to the board, after which it would go to governance groups at each UW institution for input. He suggested that the committee's recommendations be forwarded to Regent President Walsh who would decide how to proceed once the matter was before the board.

Professor Schauer stated his objection to this manner of proceeding, expressing his belief that faculty views should be sought before sending the proposal to the board.

Ms. Brady noted that faculty would have the opportunity to comment after the proposal was presented to the board and she suggested that the committee might meet again after faculty comments were received and before the board would act on sending the proposed rule to the Legislature.

Professor Schauer commented that a proposal coming from the board already would have momentum and that it would be preferable to solicit faculty input first.

The committee then turned its attention to a document titled, "Proposed Chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases." Ms. Brady explained that, pursuant to direction at the last meeting, she and Professor Dickey had prepared the draft, with assistance from Russ Whitesel, Senior Staff Attorney for the Legislative Council.

"Serious Criminal Misconduct", as defined in UWS 7.02, would trigger an expedited disciplinary process and procedures for suspension without pay and would constitute just cause for dismissal. Serious Criminal Misconduct also would need to meet one of the four conditions set forth in (a)-(d) in order to establish a nexus between the criminal act and its impact on the university.

Regent Spector indicated that the questions before the committee regarding this section were: 1) whether to use this definition rather than a list of enumerated felonies; 2) whether Serious Criminal Misconduct means conviction of a felony, being charged with a felony, or engaging in behavior that constitutes the commission of a felony; and 3) whether (a)-(d) should be used to provide a nexus to impact on the university.

Professor Dickey added that in UWS 7.06(a) it would be important to include a standard for "substantial likelihood" that the faculty member had engaged in the conduct.

Regent Rosenzweig inquired as to an example of a case in which a person might have engaged in commission of a felony but not charged with a felony. Professor Dickey explained that such occurrences as a plea agreement or turning state's evidence might lead to a decision not to file criminal charges, although there still could be a sufficient level of confidence that the person engaged in the criminal behavior.

Regent Smith and Regent President Walsh expressed their preference for using the words "engaging in behavior that constitutes the commission of a felony." Professor Dickey stated his agreement with that view on the basis that the question should be whether the person committed the act, rather than whether the criminal justice system decided to file charges.

In response to a question by Regent Spector, Professor Dickey indicated that the reporting responsibility set forth in UWS 7.04 would put the obligation on the faculty member to report being charged with or convicted of a felony; otherwise, the university would have no way of knowing of such occurrences.

Regent Spector asked who would decide if the behavior was felonious, to which Professor Dickey replied that the provost would need to make the determination that the behavior would amount to a felony; otherwise UWS 4 procedures could be employed.

Ms. Brady explained that factors (a)-(d) were drawn in part from professional codes of ethics, whether the behavior caused risk to the safety of the community, and whether it seriously impaired the university's ability to fulfill its mission or the faculty member's ability to fulfill his or her duties.

Regent Rosenzweig commented that factors (c) and (d) might be seen as incorporating factor (a).

Professor Dickey noted that the factors were connected to the declaration of policy in proposed UWS 7.01.

Commenting that factor (a) seemed overbroad, Regent President Walsh asked how freedom of speech would be protected in implementing that factor.

Professor Dickey noted that offensive speech would not be considered a felony.

Regent Spector observed that it would be a judgment call as to whether a given conduct would constitute a felony.

Assistant Professor Olson expressed concern that the rule would make the accused person "guilty until proven innocent" and that a false accusation could destroy a person's life. She thought that the proposed rule could result in miscarriage of justice and that factor "a" could put a person who was simply out of favor at risk for losing his or her job. She concluded by noting that the university must defend the rights of people to due process.

Professor Schauer felt that the committee should not have accepted assistance from the Legislature in this matter and that the proposed rule would be an inappropriate response to legislative pressure. He noted that most dismissal cases are handled through negotiation and asserted that the board has incorrectly defined just cause in past cases by using the Safransky standard which has been opposed by all UW faculty senates.

While he could accept a list of serious felonies as constituting just cause, he did not agree with a standard short of conviction of the crime. In that regard, he noted that plagiarism also is considered cause for dismissal, even though it does not warrant a jail sentence. Finally, he asked about the recompense to a person wrongly accused and whether that person would receive damages or attorney's fees.

Assistant Professor Nack expressed concern that the right to representation was not set forth in the proposed rule.

Regent President Walsh pointed out that, in most employment situations, the employer has the right to terminate an employee, although the employee can later contest the decision. Referring

to a recent case at UW-Madison, he pointed out that the public could not understand why the disciplinary process was not even started until after the employee was convicted and put in prison. The proposed rules were intended to respond to such concern by expediting the process.

Dr. Olson suggested asking faculty to develop a solution in a way that would not impinge on the rights of the accused.

Professor Dickey replied that the proposed rule would protect a person's rights. In order to constitute just cause, there must be felonious behavior, plus one of the factors in (a) through (d). The expedited process would require that provosts consult with governance bodies and talk with the accused person. There would be an investigation and hearing on campus, with all due process protections afforded, and the matter would then come to the Board of Regents for decision.

Ms. Brady added that the proposed rule incorporated all the protections set forth in UWS 4, including the right to representation.

In response to Professor Schauer's comment about legislative pressure, Regent Rosenzweig remarked that that it is the board's responsibility to respond to public opinion and to make sure that the university's processes work effectively. She observed that the committee had done good and serious work and that people would have the opportunity to comment on the proposal.

Regent Spector added that, while the matter is a regent responsibility, the committee welcomed help and comment from legislative representatives, faculty representatives and others who have participated in the meetings. He found their comments to be helpful and appropriate.

Referring to proposed UWS 7.05(6), Regent President Walsh asked if the board review is to be made by the full board or by a committee.

In reply, Regent Rosenzweig expressed the view that the full board should review the matter because of the gravity of such situations. Regent Spector added that this process would only be employed in exceptional cases.

Ms. Brady explained that the language is like that in UWS 4. Even if the Personnel Matters Review Committee conducts the review, the decision is made by the full Board of Regents.

While he had been critical of the slow pace at which recent cases moved, Regent President Walsh expressed concern that the time frame in the expedited process might be too tight.

Ms. Brady explained that the effort was to have the process completed in 60 days and that proposed UWS 7.05(8) provides for enlargement of the time limits, if necessary.

Professor Schauer felt that the 10 day timetable for board review would be too short. In that regard, he noted that the hearing record from the campus must be obtained, followed by establishing a briefing schedule and conducting oral argument. He asked if all regents would be expected to analyze the full record.

Replying in the affirmative, Regent Spector remarked that such an expectation would not be unreasonable for these very serious cases. With regard to proposed UWS 7.05(8), he explained that the intention would be to honor the due process rights without providing a "back door" to slow down the process

Professor Dickey added that unavailability of witnesses or evidence might make it impossible to expedite the process.

Regent Smith asked who would decide whether to enlarge the time limits, to which Ms. Brady replied that the faculty committee could make that decision for the campus portion of the proceedings and that the president of the board would decide once the matter is before the board.

Regent Spector stated that he was comfortable with the time limits as proposed and with the language in (8) which stated as reason for enlarging the time limits inability to obtain testimony, evidence or records.

Mr. Musolf explained that, with regard to recent UW-Madison cases, delay occurred because the cases came forward at the beginning of summer when faculty on nine-month appointments were not on campus, while others were out of the state or country. In such circumstances moving the process forward presented a considerable challenge.

Regent President Walsh pointed out that, in one of these cases, the conviction occurred in April and the appointment still had not been terminated. The public, he said, expects expeditious action.

Regent Spector suggested that the faculty could make rules that would focus on ways to expedite the campus process.

Chancellor Markee suggested a two-layered approach to time limits, with a decision to enlarge the time limits made by the faculty hearing committee with approval by the provost or president of the board.

Mr. Musolf remarked that scheduling and completing the hearing process in 14 days would be difficult, noting that hearings can last for two or more days, after which a recommendation to the chancellor must be prepared.

Professor Dickey pointed out that suspension without pay would provide an incentive to move the process forward.

Turning to proposed UWS 7.02 and 7.03, Professor Dickey noted that the basis for dismissal would be just cause as defined

by commission of a felony plus one of four factors. Noting that the burden of proof should be defined, he suggested that "probable cause" would be too low a standard and "without reasonable doubt" would be too high. He asked if the standard should be "clear and convincing evidence".

Ms. Brady suggested that the standard be "preponderance of evidence", which is the standard for civil cases.

Regent Spector asked what would happen if a person were to be suspended without pay, but then not dismissed.

In reply, Ms. Brady indicated that previous litigation has established that the university would not be responsible for attorney's fees. However, there could be responsibility for back pay and reinstatement.

Professor Dickey added that, if a decision were made not to dismiss, an array of remedies could be employed, one of which could be reinstatement with back pay.

Summarizing the discussion, Regent Spector said his interpretation was that "preponderance of evidence" would be set forth as the standard; reinstatement with back pay would be a remedy; a two-layer approach for enlarging the time limits would be employed; review at the regent level would be by the full board; and "engaging in behavior that constitutes commission of a felony" would be the language used in proposed UWS 7.02.

In response to a question to Regent Spector about the process for legislative review of the rule, Ms. Matthias explained that the proposed rule would be referred to a legislative committee for passive review. If it wished, the committee could conduct a meeting about the rule and object to it or make changes.

In reply to an inquiry about the process for shared governance involvement in providing input on the proposed rule, Mr. Musolf noted that rule changes often are provided to chancellors for distribution to faculties. Ms. Brady added that the rule could be distributed through the chancellors or the elected faculty representatives, and Chancellor Markee expressed preference for distribution through the chancellors.

Professor Dickey suggested that a one or two page commentary be provided by the committee to accompany the proposed rules. The board then could distribute the rules and commentary to the campuses for shared governance input and could, if it wished, ask the committee to consider that input and forward a final draft to the board.

Regent President Walsh added that his intention would be for the board to discuss the proposed rules and then forward them to the campuses for review and input.

Regent Rosenzweig suggested that two months be allowed for faculty review, and Chancellor Markee agreed.

Regent Spector added that the committee then could meet to consider the faculty input in April and bring the matter back to the board in May. Ms. Brady added that the board would need to hold a hearing on the proposed rules.

Professor Schauer noted the faculty's statutory primary responsibility for faculty personnel rules, stating that this authority could not be overridden by the board.

In response, Regent Spector stated that the Regents would remain aware of the faculty role and proceed with the advice of counsel.

Regent Rosenzweig moved to approve the draft rules, subject to the following:

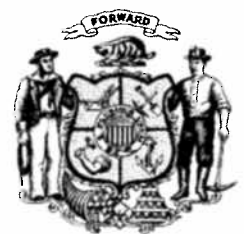
- o In 7.02(1), use the words "engaging in behavior that constitutes the commission of a felony" and capitalize the first letters of "Serious Criminal Misconduct"
- o In 7.05(6), indicate review by the full Board of Regents in the first and third lines.
- o Add a section to provide that the burden of proof will be preponderance of evidence.
- o In 7.05(8), provide for two layers of review of a decision to enlarge time limits.
- o Provide that the array of remedies in a case where a decision is made not to dismiss after suspension without pay will include reinstatement with back pay.
- o Include a narrative with the proposed rules.

The motion was seconded by Chancellor Markee and approved on a unanimous voice vote.

The meeting was adjourned at 3:50 p.m.



WISCONSIN STATE LEGISLATURE



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

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

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

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

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

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

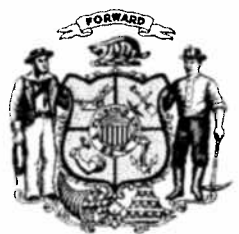
(3) *Suspension without pay.* The new language would also clearly provide for suspension without pay during the pendency of the internal process where: (a) A faculty member has been charged with serious criminal misconduct, and the provost has determined that there is a substantial likelihood that the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

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

cc: Regents
President Reilly
Chancellors
Cabinet
Committee Members



WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY PROCESS

Notice of Meeting

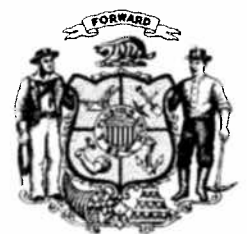
April 17, 2006
3:00 p.m.
Van Hise Hall 19th Floor Conference Room
1220 Linden Drive
Madison, Wisconsin

AGENDA

1. Approval of the minutes of the January 25, 2006 meeting
2. Initial review of governance group input received to date as to proposed administrative rules regarding the faculty disciplinary process
3. Discussion of next steps
4. Adjournment



WISCONSIN STATE LEGISLATURE



Student
PAZ
Ad Body

John D.
Ad Body

my phone
- Brent
- Dave

①

1/17/06 - Faculty Disciplinary Process

- Submissions to "Coal" by May 5
 - letter sent to every faculty for response to policy
- Will meet again in May as sub-committee
- Requests to get again at June mtg.

Wast - Good news, lot of responses, people are considering & commenting

- ① When trigger
 - ② Burden of proof
 - ③ Some principle
- } 3 main comments that heard

PAZ - How do we proceed?

Scam - what is, what proposed - sent off out before mtg - effect of proposed changes

Wast - withdrawal policy -

How?

Prof. - alternative proposed in April

- At the moment
- been pursuing some companies

George - What is the situation?

- will ^{be} ^{discuss} ^{at} ^{the} ^{May} ¹⁷ ¹⁸ ¹⁹ ²⁰ ²¹ ²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸ ²⁹ ³⁰ ³¹ ²⁰⁰⁶

George -

- Survey

Wish - ^{based on} ^{advice} ^{of} ^{the} ^{committee}

Definition

News

Trigger, who makes, burden

Susp w/o pay

Faculty Sen

discuss intent & provisions

- if rumors about faculty involvement - alt. proposal 9/19
part of the proposal

↳ part of the CW Superior submission (?)

- Meet again May 16 @ 3:00 + on May 25 @ 1:00 p.m.

↳ receive materials for mtg by May 12

Ch. 7

Bo. 17 + Ch. 27

↳ requires statement of scope ?

↳ who is talking to

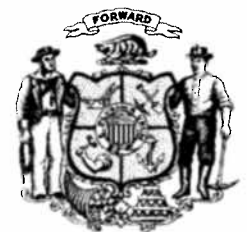
↳ state not clear

→ design shall

→ Faculty shall have control personnel policy



WISCONSIN STATE LEGISLATURE



Disciplinary Policy – Summary of Input from Governance Groups.

- I Sources:**
- UW-Platteville Academic Staff Senate
 - UW-Oshkosh Faculty Senate
 - UW-Parkside Faculty Senate
 - UW-Stevens Point Academic Staff Committee
 - UW-Whitewater Faculty Senate
 - UW-Eau Claire University Senate
 - UW-Extension Faculty Senate
 - UW-Superior ?*

II Concerns

- Timing of investigation and termination in relation to accusation or conviction.
 - Process should follow, not anticipate legal proceedings.
 - Inappropriate to suspend without pay a faculty member believed to have engaged in serious criminal misconduct.
 - Consider reassignment of duties to address risks.
- Definition of “criminal misconduct.”
 - Open to broad interpretation.
 - Does not require charge or conviction.
 - Difficulty of determining whether criteria for a felony constituting “serious criminal misconduct” are met.
 - Appropriateness of a dismissal based on the opinion that the efficiency of colleagues or students have been impaired.
- Suspension without pay
 - Imposes a penalty before completion of due process.
 - Restitution to employee in case of erroneous action should be mandatory.
- Shared governance concerns.
- Investigatory Concerns
 - Expedited time limits are too short to conduct serious investigation.
 - Too much discretionary power and responsibility in the provost or appointed investigator.
 - No qualifications enumerated for investigators.
 - Lack of competence or training of administrative staff and faculty committees in investigation or adjudication of criminal charges.
- Constitutional/Statutory Protections
 - Presumption of innocence.
 - Protection from self incrimination.
 - Due process.
 - Protection from employment discrimination based on arrest or conviction record unless substantially related to circumstances of particular job.
 - Burden of proof is too low.
 - Failure to require that a copy of the investigator’s report be provided to the accused.

- No appeal rights enumerated.
- No legal protection provided for provost, investigator, standing committee, governance bodies.

III Suggested Changes


- Serious criminal misconduct (UWS 7.02)
 - Substitute “felonious activity” for “serious criminal misconduct.”
 - Conviction of rather than engaging in behavior constituting commission of a felony as definition of serious criminal misconduct.
 - Eliminate “seriously impairs the public trust in the university” from definition of serious criminal misconduct.
 - Eliminate consideration of efficiency of colleagues and students from definition of serious criminal misconduct.
 - Eliminate the phrase “Except as otherwise expressly provided” from UWS 7.02(3) since UWS 4 does expressly provide otherwise.
- Reporting responsibility (UWS 7.04)
 - Eliminate
- Expedited Process (UWS 7.05)
 - Eliminate preponderance of the evidence from statement regarding burden of proof in expedited process [UWS 7.05(8)].
 - Change burden of proof to “clear and convincing evidence.”
 - Place discretion regarding enlargement of time with the faculty hearing body, not its chair [UWS 7.05(9)9b)].
 - Faculty member provided with a copy of investigator’s report [UWS 7.05(2)].
- Temporary Suspension Without Pay (UWS 7.06)
 - Reassignment in lieu of suspension without pay.
 - Eliminate section UWS 7.06 (1)(a) as a circumstance justifying suspension without pay. (“The faculty member has been charged with a felony and the provost finds . . . “)
 - Temporary suspension for conviction or inability to report for work due to incarceration. Revise UWS 7.06(a) to provide that the faculty member has been *convicted* of a felony meeting one or more of the elements of serious criminal misconduct [UWS 7.01(a)-(c)].
 - Temporary suspension should be by action of provost *with the consent of the appropriate faculty governance representatives; hearing before provost and appropriate faculty governance representatives*; should be a joint decision [UWS 7.06(2) and (3)].
 - Mandatory back pay if Chancellor or Board later determines faculty member should not have been dismissed [UWS 7.06(3)(a) and (b)].
 - Suspension without pay hearing before standing committee charged with hearing dismissal cases [UWS 7.06(2)].
 - Include a provision for representation.



UNIVERSITY *of* WISCONSIN
LA CROSSE

March 27, 2006

To: Regent Mike Spector, Board of Regents
Cora Marrett, Senior Vice President

From: Carmen R. Wilson, Chair 
UW-La Crosse Faculty Senate

As per Regent Spector's memo of February 20, 2006, the UW-La Crosse Faculty Senate Executive Committee carefully considered the draft of a new UWS Chapter 7, Wisconsin Administrative Code. The Senate Executive Committee drafted the enclosed response, which was approved by the full UW-La Crosse Faculty Senate on March 23, 2006.

The UW-La Crosse Faculty Senate agrees that the recently publicized cases of criminal misconduct, and their handling, have damaged the reputation of the UW-System and its faculty. This damage has been severe and, when coupled with other recent problems, has eroded the confidence and support that the university system has historically enjoyed. We wholeheartedly agree that such incidents must be prevented from occurring in the future. We suggest, however, that the problems could be eliminated by revising UWS 4 and ensuring the policy is followed.

We are specifically concerned with three components of the proposed UWS 7. First, we are concerned with the definition of "serious criminal misconduct," especially as delineated in UWS 7.02, 1, (c). Second, we are concerned that the expedited timeline challenges due process. UWS 4 does not inhibit timely responses, but in certain areas does not limit the timeline. For example, the Chancellor is given a "reasonable time" to investigate complaints. Proposing specified time limits for the Chancellor's actions would prevent exceptionally long timelines. Third, we are concerned with the potential for suspension without pay as specified in 7.06, 1, (a). Given the suspension depends on the judgment that a person *likely* engaged in the misconduct, we believe the judgment would be better made by a committee rather than an individual.

We appreciate the opportunity to provide feedback about the proposed chapter and thank you for your efforts to prevent abuses of policy in the future. If you have any questions, please do not hesitate to contact me.

copy: Douglas Hastad, Chancellor UW-La Crosse
Regent Judith Crain, Board of Regents
Regent Brent Smith, Board of Regents

University of Wisconsin – La Crosse Faculty Senate Response to the Proposed UWS 7 Policy

Background

The proposed UWS 7 is a response to perceived deficiencies in the existing UWS 4 policy related to the dismissal of faculty in the case of criminal misconduct. The two identified deficiencies concern 1) the length of time needed to come to a dismissal decision and 2) the inability to withhold salary while the decision process is pending. The proposed UWS 7 creates an alternate policy to UWS 4 that includes these two ideas.

The summary statement provided with the proposed UWS 7 draws a connection between the public attention surrounding recent cases of faculty felony convictions and concerns raised over the effectiveness of the university's internal disciplinary process. This connection implies that the recent cases have occurred because of, or have been exacerbated by, some deficiency in existing policy, and that this deficiency is sufficient to require the development of new policy. The summary does not however provide any analysis or evidence to suggest that the abuses inherent in the recent cases could not have been responsibly addressed through the existing policy. Reasonable discourse and action on this matter should have begun with an analysis of why the recent cases, which have most assuredly damaged the public reputation of the University System, occurred, and identification of those portions of UWS 4 which have contributed to the inability to deal with these cases in a more responsible manner. There is either a problem with existing policy or there is a problem with its application. The summary statement presented with the proposed policy does not answer this question.

Recommendations

The UW-La Crosse Faculty Senate agrees that the recently publicized cases of criminal misconduct, and their handling, have damaged the reputation of the UW-System and its faculty. This damage has been severe and, when coupled with other recent problems, has eroded the confidence and support that the university system has historically enjoyed. However, the Senate finds the specific ways in which expedited decisions and suspension of pay are implemented in the proposed UWS 7, as well as several other significant internal problems, make the proposed policy unacceptable. This document provides a detailed discussion of the proposed policy but the problems can be summarized as:

- Inappropriate and unnecessarily expansive language in the definition of Serious Criminal Misconduct.
- Inadequate care for due process in the expedited timeline.
- Inadequate grounds for suspension of pay.

It is also unacceptable that, thus far, the proposal has been developed by a committee with no voting faculty representation, despite the fact that Chapter 36.09(4) gives faculty primary responsibility in faculty personnel matters. If deficiencies in UWS 4 were clearly articulated and

connected to the recent cases, the faculty could have been requested to develop policy changes to address the deficiencies.

While the discussion below could be used to suggest specific language changes to the proposed policy, the result would still be incomplete and flawed. The UW-La Crosse Faculty Senate believes that the goals of the new policy can be more appropriately accomplished by 1) ensuring that existing policy is followed and 2) making specific changes to UWS 4 to include the possibility of suspension of pay in the obvious and unambiguous cases discussed below, and to allow shorter time periods where appropriate. In the event that pay is suspended the policy should at least require a recommendation from the hearing committee and require that the process conclude within a specific time, unless an extension is requested in writing by the accused.

UWS 4: Procedures for Dismissal

UWS 4 details the procedures under which the Board of Regents may dismiss tenured (or tenure-track) faculty for just cause. The policy does not expand on what constitutes just cause beyond the accepted legal meaning but does state that faculty members are “entitled to enjoy and exercise all of 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.”

The process for dismissal (4.02) begins with a complaint to the Chancellor. If the Chancellor finds the complaint to be substantial and of a nature that if true might lead to dismissal, the Chancellor is required to initiate an investigation. After the investigation, should the Chancellor decide to proceed with dismissal, the faculty member is to be provided with a written statement of specific charges. The policy indicates that the charges are to be personally served or served by certified mail with a fallback process involving publication of a summons if service cannot be accomplished within 20 days. After receipt of the written charges the faculty member has the right to request a hearing.

Section 4.03 describes the standing faculty committee charged with hearing dismissal cases and the committee’s responsibilities in conducting the hearing, producing a summary of evidence and transmitting the hearing record along with the committee’s findings and decision to the Board of Regents. The faculty member must request a hearing within 20 days of notice of the charges (4.04) with the hearing to be held no later than 20 days after the request except by mutual written request of the parties. Sections 4.05 & 4.06 describe several requirements for a fair hearing and a number of procedural guarantees. In particular, section 4.06 specifies that the burden for providing evidence of just cause lies with the administration.

Section 4.07 describes how recommendations from the hearing are communicated to the Chancellor and ultimately the Board of Regents. The hearing record and committee’s recommendation (finding for dismissal, some lesser sanction or no action) are to be sent to the Chancellor as soon as practicable after the conclusion of the hearing. Within 20 days of receipt of the hearing committee’s recommendation the Chancellor is to review the material and offer to discuss it with the faculty member. Within 20 days of this meeting, the Chancellor is to produce

a written recommendation to be forwarded to the Board of Regents. If the Chancellor's recommendation is substantially different from that of the hearing committee, the hearing committee is to be given an opportunity for written response for inclusion in the record submitted to the Board of Regents. The Chancellor may take disciplinary action short of dismissal unless the faculty member requests, in writing, that the record and recommendations be submitted to the Board of Regents for action. Section 4.08 describes the procedures to be used by the Board in reviewing the recommendation. These include opportunity for filing exceptions to the recommendations of the hearing committee and the Chancellor as well as oral arguments.

Section 4.09 allows the Chancellor, after consultation with appropriate faculty committees, to immediately relieve the faculty member of duties if the Chancellor finds that substantial harm to the institution will result from the faculty member continuing in his/her position. However, if relieved of duties, the faculty member's salary will continue until the Board of Regents makes a decision on dismissal.

Proposed UWS 7

The proposed new policy contained in UWS 7 is intended to specifically address cases of serious criminal misconduct. The document "Summary of Recommended Changes Regarding the Disciplinary Process for Serious Criminal Misconduct" states that the new policy makes several significant changes from current procedures consisting of 1) definition of serious criminal misconduct, 2) expedited time limits, and 3) suspension of pay.

Serious Criminal Misconduct: The point of defining "Serious Criminal Misconduct" is to determine the circumstances under which an expedited process and suspension of pay can be imposed. The definition occurs in 7.02 and requires the conjunction of "behavior that constitutes the commission of a felony" with one of three contributing factors. These are:

- a) Clearly poses substantial risk to safety of the university community.
- b) Seriously impairs the public trust in the university and the university's ability to fulfill its mission.
- c) Seriously impairs the faculty member's fitness or ability to fulfill duties or impairs the efficiency of colleagues and students with whom he or she works.

The first two certainly seem to be included in the factors envisioned in UWS 4.09 that allow a Chancellor to relieve a faculty member of his/her duties pending a final decision on dismissal. The third statement is vague and presents a low subjective standard in its phrase "impairs the efficiency".

The document states that the intent is to describe egregious misbehavior that warrants the new sanctions of this policy. However, it is hard to imagine what "egregious behavior" would fail to fall under a) or b) but would be covered by c).

Expedited Time Limits: UWS 4 contains the following references to time periods involved in the process prior to the point at which the matter is given to the UW-System President for referral to

the Board of Regents. These time periods have customarily been assumed to refer to calendar days.

1. The Chancellor shall investigate the complaint within a *reasonable time*.
2. The statement of written charges shall be served personally or by certified mail unless this cannot be accomplished within *20 days* in which case service is made by first class mail and publication of a summons.
3. The faculty member has *20 days* (or *25* if by publication) after notice of charges in which to request a hearing.
4. The hearing is to occur within *20 days* of the request.
5. Notice of the hearing will be made *10 days* prior to the hearing (note that this is subsumed within the *20 days* of #4).
6. The hearing committee sends, *as soon as practicable*, its recommendations to the Chancellor.
7. The Chancellor reviews the hearing recommendation within *20 days* of receipt and offers the faculty member an opportunity to discuss recommendations.
8. The Chancellor prepares a written recommendation within *20 days* of meeting with faculty member.
9. If the Chancellor's decision differs from the hearing committee, the hearing committee is to be provided *reasonable opportunity* to provide a written response.

Reference 2 is really concerned with the method by which legal notice is provided. It is hard to see how this time constraint can be changed unless another method of notice is deemed legally appropriate. Since the proposed policy is concerned with especially egregious behavior it is not clear that a more defensible method of legal notification exists.

Reference 3 is the time in which the faculty member can consider whether to appeal and to begin to gather evidence and documentation to support that appeal, since the hearing could occur as soon as 10 days after the request and would normally occur no later than 20 days (reference 4) after the request.

Reference 6 has to do with the time period in which the hearing committee reports its decision. It is normally understood that the committee deliberates immediately after the hearing. Consequently, the only delay is in collecting together the record of the hearing and the committee's decision. This normally happens the day after the hearing.

The remaining references (#1, #7, #8 and #9) are essentially under the Chancellor's control, especially the open-ended "reasonable time" of #1. The process defined by UWS 4 could, if desired, operate quickly and there is certainly plenty of opportunity for the Chancellor to expedite the process.

Suspension of Pay: Section 7.06 of the proposed policy allows the Provost, after consultation with appropriate faculty governance representatives to suspend the faculty member from duties and to do so without pay pending the final dismissal decision. The policy lists three situations in which suspension without pay is warranted.

- a) The faculty member has been charged with a felony and the Provost finds that the elements of serious criminal misconduct listed in 7.01 apply and further that there is substantial likelihood that the faculty member has engaged in the alleged conduct.
- b) The faculty member is unable to report for work due to incarceration, conditions of bail or similar cause.
- c) The faculty member has been convicted of serious criminal misconduct.

In the case of c), a court has found that the faculty member has committed a felony, and if the felony was connected to the performance of the faculty members duties, this presumably forms adequate cause for the Board to dismiss. In the case of b), a court has at least found sufficient cause to limit, through incarceration or bail restrictions, the movements of the faculty member to the point that they can no longer perform their duties. The inability of the faculty member to perform the duties of his/her position for an extended period of time again is presumably sufficient grounds for the Board of Regents to decide for dismissal. In these two cases the presumption that the Board will find for dismissal may be sufficient to warrant suspension of salary pending the Board's decision. It should be noted, however, that the proposed policy does not actually guarantee that the board will come to a decision in a specific time frame (7.05(9)). Consequently, the suspension of pay may in fact be for an indefinite period.

The situation in case a) is much more problematic. In this case the Provost is asked not only to find that a felony charge corresponds to the requirements of 7.01, but that there is substantial likelihood that the faculty member is guilty. Substantial likelihood is a high standard and if it exists one would expect that the process under UWS 4 could quickly proceed to a dismissal decision by the Board, and consequently presumptive suspension of pay would be unnecessary. Lacking the circumstances of b) or c) suspension of pay should at least require the opportunity for a hearing and a finding for dismissal. This would at least provide some basis under which to believe that the Board would find for dismissal.

Other Issues With UWS 7

Section 7.04 states that "Any faculty member who engages in Serious Criminal Misconduct shall immediately report that fact to the Provost." While the intent of this may be clear there is a subtlety in its interpretation. It can be argued that an act is not a felony until a court has rendered that judgment. Under this interpretation, faculty would be required to inform the Provost whenever they are convicted of a felony and it falls under the parameters of Serious Criminal Misconduct described in 7.02. This might be a reasonable requirement, and consistent with other examples of mandatory reporting, but if this is the intent, there seems to be little hope for compliance, since the consequences of not reporting a conviction cannot be worse than the consequences of reporting an offense that is presumptively sufficient to justify dismissal. If, on the other hand, the intended interpretation is that reporting is required by faculty members who have engaged in an activity that might lead to a felony conviction, then this constitutes a self-incriminating confession and would presumably make the Provost a potential witness to the confession at a trial.

It is odd that by using the phrase “engages in ... Misconduct” this section is clearly not referring to a more obvious and less problematic requirement that faculty report when they have been legally charged with a felony that falls under the parameters of UWS 7.02. It is also odd that there is no requirement that all employees report information pertaining to possible Serious Criminal Misconduct as described in UWS 7.02. It seems likely that this section is included with the expectation that the required report would not occur and that this failure to report would constitute an uncontestable violation of policy that could, itself, serve as the grounds for sanctions.

Section 7.05 defines the parameters of the expedited process. Unlike UWS 4, the Provost has responsibility to receive either reports under 7.04 or other credible information alleging that a faculty member has engaged in Serious Criminal Misconduct. In these cases, or if the Provost has determined to suspend without pay pending a final dismissal decision under 7.06, the Provost is required to follow the following steps.

- 1) Within 3 working days of the receipt of information the Provost is required to inform the faculty member and, after consultation with institutional governance, appoint an investigator.
- 2) Within 3 working days of the appointment of an investigator the faculty member can request disqualification of the investigator on the grounds of lack of impartiality. It is up to the Provost to grant this request and if granted within 2 working days the Provost must appoint another investigator.
- 3) The investigator is required to complete and file a report with the Provost no later than 10 working days after the time allowed for requesting a disqualification or after the naming of an alternate.
- 4) Within 3 working days of receiving the investigator’s report the Provost is required to consult with appropriate institutional governance representatives and decide whether to seek dismissal under UWS 7. As an alternative the Provost may seek dismissal under UWS 4 or other disciplinary action under UWS 6 or discontinue the process.
- 5) Within 2 working days of reaching a decision to seek dismissal under UWS 7 the Provost is required to file charges.

Unlike UWS 4, this section does not specify the method by which the faculty member is to be informed of the initial information or report, nor does it specify whether the information is to be communicated verbally or in writing, nor does it specify the completeness with which the information is to be communicated. It may be presumed that the charges filed at step 5 are to be in writing and provided to the faculty member, but the policy does not say this nor does it say that the charges are to be filed with the Chancellor. The timeline in this section also omits the opportunity for informal discussion with the faculty member that is included in UWS 4.02.

The nature and role of the investigator is also problematic. In UWS 4.02 it is the Chancellor that initiates an investigation that is presumably performed by the Chancellor or by proxy the Chancellor’s staff. In this section, there is no indication as to the group from which the investigator is chosen or the investigator’s qualifications. Is the investigator one of the Provost’s staff, a faculty member or possibly an outside agent? The section also lacks any indication of the

nature of the investigation. Certainly, the investigation should attempt to independently verify, to the satisfaction of the Provost, the information that alleges misconduct. An investigation beyond this scope, in the nature of a criminal investigation, may be problematic especially given the short timeframe. There will, presumably, be a concurrent police investigation that may tend to limit the information that can be discovered by the investigator. There is no need to duplicate a police investigation since that investigation will either lead to charges or not, in a timely manner.

The process timeline continues with

- 6) If charges for dismissal are filed under UWS 7 the faculty member is to be afforded a hearing by the faculty committee described in 4.03 and under the rules enumerated in 4.05 and 4.06 except that the hearing is to be completed and written findings and recommendations prepared for the Chancellor within 15 working days of the filing of charges.
- 7) Within 3 working days of receiving the hearing committee's findings and recommendations the Chancellor must prepare a written recommendation and if the Chancellor recommends dismissal the recommendation is to be transmitted to the Board of Regents. The Chancellor has the same alternatives for lesser sanctions.

Unlike UWS 4, this policy does not specify a time period in which the faculty member may request a hearing. Rather, it seems to presume that a hearing will be requested and that the result of the hearing must occur within a time measured from the filing of charges, as opposed to the time a hearing is requested. However, section 7.05 does mention the possibility that a hearing is not requested, so there is some ambiguity on this point. Also, unlike UWS 4, this policy does not contain the language covering the case where the hearing committee and Chancellor come to different recommendations.

The process concludes with

- 8) The full Board shall review the record before the hearing committee and issue a decision within 15 days of receiving the Chancellor's recommendation.

Unlike 4.08, the Board may, but is not required to, offer opportunity for filing exceptions to the recommendations and for oral arguments. It is also not clear that the Hearing committee recommendations as well as the record of the hearing are to be sent to the Board.

With respect to the time line involved in UWS 4, this policy makes changes in three areas. First, the initial investigation that leads to written charges is now the responsibility of the Provost and must be concluded within 20 days, where in UWS 4 this is done by the Chancellor within a reasonable time. Second, whereas UWS 4 allows 20 days in which the faculty member may request a hearing and 20 days in which the hearing can be scheduled and conducted, the proposed policy condenses this to 15 working days. This means that the faculty member may have as little as 5 days after receiving the specific charges in which to prepare for the hearing (this follows from the 10 day hearing notice required in 4.05). Third, the time allowed for the Chancellor to reach a decision has been reduced to 3 working days and the opportunity to discuss the matter with the faculty member has been removed.

Section 7.05 does contain a provision to enlarge the time limits of the process under certain circumstances. The section states that enlargements of time may be granted by the chair of the hearing committee subject to approval by the Provost. This clause seems to be inadequately developed. Why should the chair of the hearing committee grant extensions to the Provost's initial investigation and why should either need to approve extensions to the time requirement for the Chancellor's decision? Most likely this is intended to apply only to the time allowed for the hearing committee, in which case this marks a substantial change and diminution of due process from UWS 4, where mutual consent of the parties, or order of the hearing committee, is required to extend the time allotment.