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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

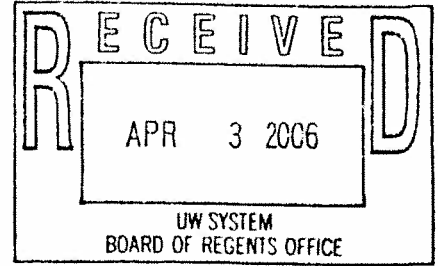
- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**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)



# UNIVERSITY of WISCONSIN - EAU CLAIRE

105 Garfield Avenue • P.O. Box 4004 • Eau Claire, WI 54702-4004



March 30, 2006

Cora Marrett, Senior Vice President for Academic Affairs  
1624 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

Dear Vice President Marrett:

On March 28, 2006, the University Senate of the University of Wisconsin - Eau Claire passed the attached resolutions in response to the proposed Chapter UWS 7, Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases.

Please note that Eau Claire has a combined governance structure of both faculty and academic staff. Although the responses were drafted by the faculty and academic staff personnel committees respectively, each of them was endorsed by the entire University Senate.

We greatly appreciate the opportunity to have input on this important matter. If you have any questions, please feel free to contact me.

Sincerely,

Andrea Gapko  
Acting Chair

AG/ws

c: Regent Spector  
David Walsh, Regent President  
Chancellor Larson

enclosures

cc: Pat Brady JAG 4-7-06

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e-mail: [senateu@uwec.edu](mailto:senateu@uwec.edu) • <http://www.uwec.edu/usenate>

MOTION PASSED BY UNIVERSITY SENATE  
University of Wisconsin – Eau Claire  
March 28, 2006  
Faculty Response to Proposed UWS 7

That the following response to the Proposed Chapter UWS 7, Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases be forwarded to the Board of Regents and the University of Wisconsin System Administration.

**PREAMBLE**

The University Senate appreciates the desire of the Board of Regents to preserve public trust in the UW System. However, the University Senate believes that the proposed UWS 7 will not withstand the inevitable legal scrutiny it shall receive upon its first application. More fundamentally, we are concerned that due process and fundamental fairness are not adequately protected in the proposal. In particular, (1) a faculty member need not even be charged with a crime under the procedures, (2) the standard of proof specified in the procedures is not sufficiently rigorous, (3) the procedures specify no mechanism for a faculty member to appeal a decision to suspend him or her without pay, and (4) the procedures make payment of back-pay discretionary in cases in which the faculty member is not dismissed. We find the policy problematic in other ways, as well, but limit our response to the issues we find most troubling. As a result, we offer the following specific recommended changes to the proposed UWS 7. We consider these changes necessary prior to acceptance of the proposed UWS 7.

**SPECIFIC RECOMMENDATIONS**

**UWS 7.02 Serious criminal misconduct.** (1) In this chapter, "Serious Criminal Misconduct" means engaging in behavior that constitutes the commission of a felony **for which the faculty member has been formally charged by the appropriate legal authority**, and that:

**Explanation:** It is important that a neutral third party, trained evaluating the veracity of allegations of criminal misconduct, be involved in the initiation of the processes defined in UWS 7. To do otherwise endangers the essence of a "fair and impartial" due process.

**UWS 7.04 Reporting responsibility.** Any faculty member who ~~engages in~~ **has been formally charged with behavior that constitutes** Serious Criminal Misconduct shall ~~immediately~~ report that fact to the provost **in a timely manner**.

**Explanation:** To expect any person who engages in criminal activity to self-report that activity prior to its discovery is naïve. Inclusion of such an expectation seriously diminishes the credibility of the entire chapter.

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

*Items (1) through (7) and (9) left unchanged.*

**(8) The burden standard of proof shall be a preponderance of the clear and convincing evidence that the faculty member has engaged in Serious Criminal Misconduct as set forth in UWS 7.02(1).**

**Explanation:** “Preponderance of the evidence” is the lowest standard of proof in our legal system. This standard of proof too easily exposes a faculty member to wrongful dismissal and the university to the legal ramifications that would result. While the standard governing criminal trials, proof beyond a reasonable doubt, may be too high for the purposes of UWS 7, we recommend the middle ground of a standard requiring “clear and convincing evidence.”

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

*Items (1), (2), and (4) left unchanged.*

(3) If, after affording the faculty member the opportunity to be heard, the provost determines to suspend without pay, the provost shall inform the faculty member of the suspension, in writing. **The faculty member may appeal the provost’s decision to the institutional standing committee charged with hearing dismissal cases. This committee shall hear the appeal within three working days and make a recommendation to the chancellor regarding the faculty member’s appeal within two working days. Within two working days of having received the committee’s recommendation, the chancellor shall decide whether to uphold or reverse the provost’s decision, and shall communicate this decision to the faculty member, in writing.** The provost’s A decision to suspend without pay under this section shall be final, except that:

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

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

**Full payment of back pay shall be awarded when it is determined that the faculty member has not engaged in behavior that constitutes Serious Criminal Misconduct as set forth in UWS 7.02(1).**

**Explanation:** A right to appeal a decision to suspend without pay is crucial to due process. The language used in (a) and (b) allows for the partial repayment of back pay based on the determined severity of the appropriate penalty. This is acceptable; however, it should be clear that if the faculty member is found to be innocent of the alleged behavior, the full repayment of back pay is mandatory.

MOTION PASSED BY UNIVERSITY SENATE  
University of Wisconsin – Eau Claire  
March 28, 2006  
Academic Staff Response to Proposed UWS 7

That the following response to the Proposed Chapter UWS 7, Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases be forwarded to the Board of Regents and the University of Wisconsin System Administration.

### **Preamble**

We are dismayed that the criminal actions of a few individuals have prompted the proposed Wisconsin Administrative Code (UWS 7). Over 42,000 University of Wisconsin System employees daily perform their professional duties in an ethical manner, providing countless educational, research, and community benefits for the citizens of Wisconsin. A hasty decision to change the Wisconsin Administrative Code may harm faculty who are accused but later found innocent of serious criminal misconduct. Thus, our proposed changes to UWS 7 are meant to aid in balancing fairness and due process with the responsibility of the University of Wisconsin System to provide a safe educational and work environment for students and employees.

The document, as originally drafted, causes much concern due to a variety of factors:

- Vests too much discretionary power and responsibility in the Provost or the Provost's appointed investigator
  - Requires the lowest standard of proof in our legal system: "preponderance of evidence." "Clear and convincing evidence" is the standard of proof we find necessary to initiate a dismissal proceeding.
  - Ignores the constitutionally protected notion that one is "innocent until proven guilty"
  - Allows a faculty member who is believed to have engaged in serious criminal misconduct to be suspended without pay
  - UWS 7.02 (1) (c) 2. allows dismissal based on an opinion that the efficiency of colleagues or students has been impaired
  - UWS 7.05 (2) does not require that a copy of the investigator's report be provided to the accused faculty member
  - UWS 7 does not require full payment of back pay for a faculty member found innocent
  - UWS 7 does not afford a faculty member an appeal process
-

## Specific Recommendations:

### Proposed Chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases for *Serious Criminal Misconduct*

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

**UWS 7.02 Serious criminal misconduct.** (1) In this chapter, "serious criminal misconduct" means ~~engaging in~~ *charged with* behavior that constitutes the commission of a felony, and that:

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

(2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not constitute serious criminal misconduct.

(3) Except as otherwise expressly provided, a faculty member who ~~has engaged in~~ *is charged with* behavior that constitutes serious criminal misconduct shall be subject to the procedures set forth in ss. UWS 7.03-7.06.

**UWS 7.03 Dismissal for cause.** (1) Any faculty member having tenure may be dismissed only by the ~~Board of~~ **Regents** and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the end of his or her term of appointment only by the ~~Board of~~ **Regents** and only for just cause and only after due notice and hearing.

(2) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. UWS 7.02.

**UWS 7.04 Reporting responsibility.** Any faculty member ~~who engages in~~ **charged with** serious criminal misconduct shall immediately report that fact to the provost.

**UWS 7.05 Expedited process.** (1) Whenever the provost of an institution within the ~~u~~University of Wisconsin ~~s~~System receives a report under s. UWS 7.04 or other credible information that a faculty member has engaged in **and is charged with** serious criminal misconduct, ~~or where the provost has determined to~~ **may** impose a suspension without pay ~~pending~~ **prior to** the final decision as to dismissal under s. UWS 7.06; . ~~T~~he provost shall:

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

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

(2) ~~After agreement on an investigator has been reached,~~ **After agreement on an investigator has been reached,** the investigation shall be completed and a report filed with the provost ~~not later than~~ **within** 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.~~ **A copy of the report shall be provided to the faculty member under investigation at the same time.**

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

(a) ~~If the provost decides to seek dismissal of the faculty member pursuant to this chapter,~~ **Seek dismissal of the faculty member pursuant to UWS 7.** ~~The provost shall file charges within two working days of reaching this decision;~~

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

(c) **Seek an alternative disciplinary sanction.** If the provost decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 6, and ~~local implementing institutional~~ **implementation** policies, shall be followed; **or**

(d) **Discontinue the proceedings.**

(4) If charges seeking dismissal are filed under ~~par.~~ *UWS 7.05(3)(a)*, the faculty member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 4.03. The hearing shall provide the procedural guarantees enumerated under s. UWS 4.05-4.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.

(5) Upon receipt of the findings and recommendation of the committee under ~~par.~~ *UWS 7.05(4)*, the chancellor shall, within three working days, prepare a written recommendation ~~on the matter.~~

(a) ~~If the chancellor's A recommendation is for dismissal, the recommendation shall be transmitted to the bBoard of rRegents for review.~~

(b) ~~A recommendation for Ddisciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the bBoard of Regents at its option grants a review on the record at the request of the faculty member.~~

(6) Upon receipt of the chancellor's recommendation, the full ~~b~~**Board of Regents** shall review the record ~~before of~~ the institutional hearing committee, and may *do the following*:

(a) offer an opportunity for filing exceptions to the recommendation, or

(b) ~~for~~ *listen to* oral argument.

The full ~~b~~**Board of Regents** shall issue its decision on the matter within 15 working days of receipt of the chancellor's recommendation.

(7) If a faculty member whose dismissal is sought under ~~par.~~ *UWS 7.05(3)(a)* does not request a hearing, the ~~b~~**Board of Regents** shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.

(8) The burden of proof shall be a ~~preponderance of the~~ **clear and convincing evidence that the faculty member has engaged in serious criminal misconduct as defined in UWS 7.02(1).**

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

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

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



(a) The faculty member has been charged with a felony and the provost finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.04~~2~~(a)-(c) are present, and that there is a ~~substantial likelihood~~ **clear and convincing evidence** that the faculty member has engaged in the conduct as alleged; or

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

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

(2) Before imposing a suspension without pay, the provost shall evaluate the available information to determine whether the conditions specified in ~~par. UWS 7.06~~(1) are present. If the provost finds that the conditions in ~~par. UWS 7.06~~ (1) are present, he or she shall immediately notify the faculty member, in writing, of the intent to impose a suspension without pay, and shall, within two working days, provide the faculty member with an opportunity to be heard ~~with regard to the matter~~ **by the institutional standing committee charged with hearing dismissal cases**. The faculty member may be represented by counsel or another at this meeting.

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

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

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

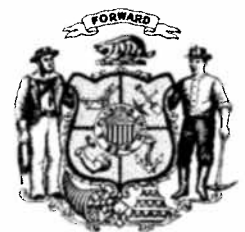
(4) If, after affording the faculty member the opportunity to be heard, the provost determines that the conditions in ~~par. UWS 7.06~~(1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 4.09 shall apply.

**Full payment of back pay shall be awarded when it is determined that the faculty member has not engaged in behavior that constitutes serious criminal misconduct as defined in UWS 7.02(1).**

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



# WISCONSIN STATE LEGISLATURE



**Matthews, Pam**

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**From:** Cheryle Goplin [cgoplin@uwsa.edu]  
**Sent:** Thursday, May 11, 2006 2:45 PM  
**To:** Michael Spector; Brent Smith; David Walsh; markee@uwplatt.edu; wjdickey@wisc.edu; Patricia Brady; Whitesel, Russ; Matthews, Pam; rschauer@idcnet.com; maternowski@wisc.edu; stockwell@wisc.edu; dadowns@wisc.edu; lkahan@wisc.edu  
**Cc:** Judith Temby; Diane Blumer; Jessie McGowan  
**Subject:** Governance Group Submissions

**Attachments:** UW-Platteville Faculty Position Paper.doc; UW-Platteville Faculty Resolution.doc; UW-Stout Faculty Submission.pdf; UW-Superior Academic Staff.doc; UW-River Falls Academic Staff.pdf; UW-Whitewater Academic Staff.doc; UW Colleges Faculty.pdf; UW-Madison Faculty.pdf; UW-Oshkosh Academic Staff.pdf; UW-Stout Academic Staff.pdf; Minutes April 17, 2006 CRFASDP.doc



UW-Platteville Faculty Positio...



UW-Platteville Faculty Resolut...



UW-Stout Faculty Submission.pd...



UW-Superior Academic Staff.doc..



UW-River Falls Academic Staff....



UW-Whitewater Academic Staff.d...



UW Colleges Faculty.pdf (1 MB)...



UW-Madison Faculty.pdf (1 MB)



UW-Oshkosh Academic Staff.pdf ..



JW-Stout Academic Staff.pdf (2...



Minutes April 17, 2006 CRFASDP...

Enclosed are additional Governance Group Submissions and Minutes of the April 17th meeting. You will need Adobe Reader to access some of the documents.  
Cheryle

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Cheryle L. Goplin  
Assistant Secretary  
Board of Regents  
1862 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706  
Phone # 608/262-2324  
Fax # 262-5739

# University of Wisconsin-Platteville Faculty Senate Position Paper

Concerning

Summary of Recommended Changes

Regarding the Disciplinary Process for Serious Criminal Misconduct  
and

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

## Executive summary of the Senate's position

The Faculty Senate of the University of Wisconsin-Platteville has serious concerns about the documents titled Summary of Recommended Changes Regarding the Disciplinary Process for Serious Criminal Misconduct and Proposed Chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases. During a lengthy discussion of the documents during the Senate's February 14, 2006 meeting, several areas of concern were identified and are summarized in this paper. Although both documents as a whole are rejected by the Senate, general points of agreement also are noted. In addition, the Senate suggests an alternative way of approaching the numerically small numbers of problems with criminal behavior by faculty members in the UW System.

**Item 1: Despite a statement to the contrary in the Summary, the documents demonstrate disregard for due process and contain ambiguities that could be used to circumvent due process.**

- UWS 7.02(1) states that serious criminal conduct is defined as “engaging in behavior that constitutes commission of a felony,” an ill-defined standard that differs significantly from a felony conviction in a court of law. Any person can be accused of a crime, with or without substantiation.
- The Proposed Chapter does not require any formal legal charges to be filed. A tenured faculty member therefore could be dismissed based simply on “other credible information that a faculty member has engaged in Serious Criminal Misconduct” [UWS 7.05 (1)].
- Provosts are required to make judgments concerning probable cause to determine whether a crime has been committed. Provosts generally do not have sufficient legal training to make such judgments.
- Judgments by provosts would be based on evidence collected by a university-appointed investigator; no qualifications are specified for such investigators.
- Provosts are interested parties in the proceedings. Due process demands that disinterested parties hear evidence and hand down judgments.
- Even if legal charges were to be filed, the proposed timeline would require provosts to hand down judgments while law enforcement officials were still conducting an investigation. Police, prosecutors and defense attorneys alike are highly unlikely to share their evidence prior to trial. Any evidence, therefore, would come solely from a single investigator with no specified qualifications.
- No standard of evidence is specified. The Proposed Chapter [UWS 7.05(8)] simply states: “The burden of proof shall be a preponderance of the evidence.” There is no specification as to the credibility of the source of the evidence.
- Furthermore, “preponderance” is the lesser standard used in civil litigation. The criminal standard of evidence is defined as “beyond a reasonable doubt” and requires a unanimous vote by a jury. A felony — the conduct under discussion — is a criminal act.
- UWS 7.06(a) states: A faculty member can be suspended without pay if “there is a substantial likelihood that the faculty member has engaged in the conduct as alleged...” which is a weak, ill-defined standard of proof.
- Felony is a broad legal classification. Under the language of the proposal, a tenured faculty member conceivably could be dismissed for tax evasion.
- UWS 7.02(2) does not establish how one will judge if the faculty member's conduct “[s]eriously impairs the public trust in the university....”

**Item 2: Shared governance has been unfairly disenfranchised during the process of developing the Proposed Chapter.**

- The Proposed Chapter was developed by a committee with no voting representation of faculty in its membership.
- The Summary statement contains an egregious factual error. The Proposed Chapter is not “subject to shared governance review.” Chapter 36.09(4) states: “...faculty shall have the primary responsibility for academic and educational activities and *faculty personnel matters*” [emphasis added].
- The top-down process of drafting the Proposed Chapter, therefore, is fundamentally flawed, since it has failed to take into account the perspective of the primary stakeholders – the faculty of the University of Wisconsin System.
- In addition, we note the glaring absence of Category A academic staff and administration from the Proposed Chapter.
- The Proposed Chapter should specify that before any faculty member is suspended without pay, the appropriate faculty governance representatives must be allowed time to evaluate the available information and render a decision as to the appropriateness of the proposed suspension.

**Item 3: The Senate agrees with portions of the Proposed Chapter.**

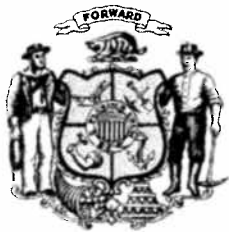
- We agree with this statement in UWS 701: “The university’s effectiveness and credibility are undermined by criminal activity that poses a substantial risk to the safety of others....”
- We also agree with the statement in UWS 701 that the university’s effectiveness and credibility are undermined by criminal activity that seriously impairs “the university’s ability to fulfill its missions, or seriously impairs the faculty member’s fitness or ability to fulfill his or her duties.”
- We further agree with UWS 706 (b) and (c) which note conditions under which faculty members may be suspended without pay: “(b) The faculty member is unable to report for work due to incarceration, conditions of bail or similar cause; or (c) The faculty member has been convicted of serious criminal misconduct.”

**Item 4: The Senate believes that the draconian measures proposed are not necessary, and in fact, are counterproductive.**

- Less drastic, less convoluted, and — more to the point — fairer remedies exist that can be used to address the concerns of the Board of Regents, the Legislature, and the public.
- The measures as proposed undermine due process and create the potential for legal action by those who might be wrongly suspended or terminated under the Proposed Chapter.
- The Proposed Chapter, if adopted, could result in suits for defamation, wrongful termination of employment and deprivation of civil rights, should a faculty member be suspended or dismissed and later exonerated in a court of law.
- We propose considering simple remedies: Such remedies are more likely to be identified during a process that includes the full and fair participation of shared governance. We offer two examples:
  - Those who are formally charged with serious criminal misconduct shall draw full salary until such time as they are convicted or exonerated in a court of law. Those who are convicted will be required to repay said moneys.
  - If, after formal charges are filed, the UW System feels strongly enough that a faculty member should not perform duties after charges are filed but before the case is final, it should seek a legal injunction barring said faculty member from campus. Thus it becomes a legal issue, not a personnel issue.



# WISCONSIN STATE LEGISLATURE



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

Whereas, the Proposed Chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases contains several provisions that could be used to circumvent due process in a court of law; and

Whereas, a number of ambiguities exist in the proposed procedures, such as whose judgment shall be exerted and what constitutes credible information when deciding whether to proceed in a case against a faculty member; and

Whereas, a faculty member could conceivably be terminated or suspended without pay upon mere suspicion of having committed a crime; and

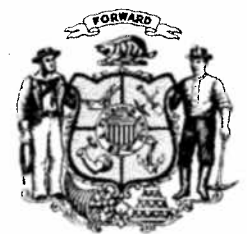
Whereas, such termination or suspension could infringe upon the rights of the accused as guaranteed by the U.S. Constitution; and

Whereas, shared governance has been consulted only in a *pro forma* fashion in development of the proposed procedures;

Therefore, be it resolved that the Faculty Senate of the University of Wisconsin-Platteville hereby declares its rejection of the proposed procedures and expresses its belief that faculty governance has been circumvented in the process of developing said procedures; the Senate recommends that the authors of the Proposed Chapter pursue remedies through a process that includes full and fair shared governance. In addition, we specifically request the opportunity to review and comment upon any revised documents before they become final.



# WISCONSIN STATE LEGISLATURE







Senate Office  
Room 11, Harvey Hall

University of Wisconsin-Stout  
P.O. Box 790 Menomonie, WI 54751-0790

7151232-1789  
7151232-1352

April 17, 2006

Regent Michael J. Spector  
Quarles & Brady, LLP  
411 E. Wisconsin Avenue  
Milwaukee, WI 53202

Dear Regent Spector,

The Faculty Senate of the University of Wisconsin-Stout would like to thank you for your effort on the Committee Regarding Faculty/Academic Staff Disciplinary Process. Your leadership and your willingness to discuss this matter and attempting to develop an effective and fair policy regarding this issue is appreciated

At their meeting on April 11, 2006, the Faculty Senate of UW-Stout unanimously passed a motion to forward to you and members of the committee and the System Administration the attached concerns and recommendations.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Schlough".

Steve Schlough  
Chair Faculty Senate  
University of Wisconsin-Stout

je attachment

C. C. Sorensen  
C. Marrett

## UWS 7 UNIVERSITY OF WISCONSIN-STOUT

After considering the Feb. 7, 2006 draft of UWS 7, the University of Wisconsin-Stout Faculty Senate acknowledges that the Board of Regents wishes through UWS 7 to address a problem. The Faculty Senate also recognizes the need for a policy which enhances the public's trust in the University system while protecting the civil rights of University of Wisconsin faculty. To these ends the University of Wisconsin-Stout Faculty Senate identifies several concerns and offers a revision of the February 7, 2006 draft of the proposed UWS 7.

### Concerns

1. Any expedited process to dismiss or to impose a penalty of leave without pay should minimize the potential for protracted and expensive litigation over due process rights.
2. Any expedited process to dismiss or to impose a penalty of leave without pay should avoid presuming guilt prior to conviction by due process.
3. Any expedited process to impose a penalty of leave without pay should not empower a provost or other interested party to investigate and make a judgment while a criminal investigation is ongoing such that access to relevant evidence may be denied.
4. Any expedited process to dismiss or to impose a penalty of leave without pay should provide clear definition of critical terms upon which to determine whether to dismiss and/or to impose a penalty of leave without pay.
5. Any expedited process to dismiss or to impose a penalty of leave without pay should require a standard of proof for a judgment of serious criminal misconduct equal to the standard applied in criminal proceedings.
6. Any expedited process to dismiss or to impose a penalty of leave without pay should avoid empowering a provost or other interested party to act unilaterally, but should provide for adjudicatory proceedings by informed, disinterested persons or adjudicatory proceedings by persons representing balanced, potentially competing interests (e.g., a provost and a faculty panel).
7. Any expedited process to dismiss or to impose a penalty of leave without pay should

provide assurance of restoration of back pay for faculty whom the chancellor determines should not be dismissed or specifically disciplined by loss of pay.

8. Any expedited process to impose a penalty of leave without pay should provide opportunity for compensation for loss of livelihood, legal expense, and damage to reputation and professional career for faculty whom the chancellor determines should not be dismissed or disciplined by loss of pay.

## Revision

### Revision of Proposed Chapter UWS 7, Wisconsin Administrative Code

#### Procedures for Dismissal of Faculty Convicted of a Felony in Special Cases

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

**UWS 7.02 ~~serious criminal misconduct.~~** ~~(1) In this chapter, *felonious conduct* "serious criminal misconduct" means that a faculty member has been convicted engaging in behavior that constitutes the commission of a felony, which and that:~~

- (a) Clearly poses a substantial risk to the safety of members of the university community or others; or
- (b) Seriously impairs ~~the public trust in the university and~~ the university's ability to fulfill its teaching, research, or public service missions; or

22 (c) Seriously impairs: ~~1. The faculty member's fitness or ability to fulfill the duties of his or her~~  
23 ~~position. ; or~~

24 ~~2. The efficiency of the colleagues and students with whom he or she works.~~

25  
26 (2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the  
27 principles of academic freedom, shall not *apply under this section* ~~constitute serious criminal~~  
28 ~~misconduct.~~

29 (3) Except as otherwise expressly provided, a faculty member who has *been convicted of a*  
30 *felony engaged in behavior that constitutes serious criminal misconduct* shall be subject to the  
31 procedures set forth in ss. UWS 7.03-7.06.

32  
33 **UWS 7.03 Dismissal for cause.** (1) Any faculty member having tenure may be dismissed  
34 only by the board and only for just cause and only after due notice and hearing. Any faculty  
35 member having a probationary appointment may be dismissed prior to the end of his or her term  
36 of appointment only by the board and only for just cause and only after due notice and hearing.

37 (2) Just cause for dismissal *under this section* ~~includes, but is not limited to, conviction of a~~  
38 *felony and a finding of 7.02 (1) (a), (b), and/or (c).* ~~serious criminal misconduct, as defined in s.~~  
39 ~~UWS 7.02.~~

40 **UWS 7.04 Reporting responsibility.** ~~Any faculty member who is convicted of a felony~~  
41 ~~engages in serious criminal misconduct shall immediately report that fact to the provost.~~

42 **UWS 7.054 Expedited process.** (1) Whenever the provost of an institution within the  
43 university of Wisconsin system receives a *credible* report ~~under s. UWS 7.04 or other credible~~  
44 ~~information~~ that a faculty member has *been convicted of a felony engaged in serious criminal*  
45 ~~misconduct, or where the provost has determined to impose a suspension without pay pending~~  
46 ~~the final decision as to dismissal under s. UWS 7.06,~~ the provost shall:

47 (a) Within three working days of receipt of the *credible* report, ~~or information,~~ inform the  
48 faculty member of its receipt and, after ~~notifying the consultation with~~ appropriate institutional  
49 governance representatives, appoint an investigator *to determine whether 7.02 (1), (a), (b),*  
50 *and/or (c) may apply to investigate the report or information;*

51 (b) Upon appointing an investigator, afford the faculty member three working days in which to

52 request that the investigator be disqualified on grounds of lack of impartiality. In the event that  
53 the provost determines that a request for disqualification should be granted, the provost shall,  
54 within two working days of the determination, appoint a different investigator.

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

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

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

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

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

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

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

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

79 (b) *Subject to ch. UWS 6 and implementing institutional policies,* ~~Disciplinary~~ disciplinary action other than  
80 dismissal may be taken by the chancellor, whose decision shall be final, unless the board at its  
81 option grants a review on the record at the request of the faculty member.

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

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

89 (8) The burden of proof shall be *on the provost to demonstrate a preponderance of the evidence*  
90 *of a conviction for a felony and that 7.02, (1), (a), (b), and/or (c) apply.*

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

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

96 **UWS 7.065 Temporary suspension from duties.** (1) The provost, ~~after consultation with~~  
97 *consent of the* appropriate faculty governance representatives, may suspend a faculty member  
98 from duties without pay pending the final decision as to his or her dismissal where:

99 (a) The faculty member has been *convicted of* ~~charged with~~ a felony *and it has been found that*  
100 *7.02 (1) (a), (b), and/or (c) apply. and the provost finds, in addition, that one or more of the*  
101 ~~elements of serious criminal misconduct listed in s. UWS 7.01(a) - (e) are present, and that there~~  
102 ~~is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or~~

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

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

106 (2) Before imposing a suspension without pay, the provost *and the appropriate faculty*  
107 *governance representatives* shall evaluate the available information to determine whether the  
108 conditions specified in par. (1) are present. If the provost *and the appropriate faculty*  
109 *governance representatives* finds that the conditions in par. (1) are present, *the provost* ~~he or she~~  
110 shall immediately notify the faculty member, in writing, of the intent to impose a suspension  
111 without pay, and shall, within two working days, provide the faculty member with an

112 opportunity to be heard *by the provost and the appropriate faculty governance representatives*  
113 with regard to the matter. The faculty member may be represented by counsel or another at this  
114 meeting.

115 (3) If, after affording the faculty member the opportunity to be heard, the provost *and*  
116 *appropriate faculty governance representatives* determines to suspend without pay, the provost  
117 shall, *in writing*, inform the faculty member of the suspension, ~~in writing~~. The provost's *and*  
118 *appropriate faculty governance representatives'* decision to suspend without pay under this  
119 section shall be final, except that:

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

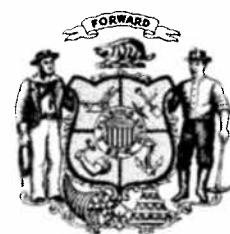
123 (b) If the board later determines that the faculty member should not be ~~terminated~~ *dismissed*, the  
124 board may order a lesser penalty ~~and/or shall order~~ the payment of back pay, *as appropriate*.

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

128 **UWS 7.076 Initial Applicability.** The provisions of this chapter shall first be applicable to  
129 *convictions* ~~conduct~~ occurring on or after the effective date.



# WISCONSIN STATE LEGISLATURE







Wisconsin's Public Liberal Arts College

To: Cora Marrett, Senior Vice President, Academic Affairs, UW System  
Julius Erlenbach, Chancellor, UW-Superior

From: Academic Staff Senate, UW-Superior  
Donna Dahlvang, Chair

Date: May 2, 2006

Re: Faculty/Academic Staff Disciplinary Procedures Draft

Thank you for the opportunity to provide input and feedback regarding Proposed Chapter UWS 7. The language of this draft is written specifically for faculty, but would potentially be applied in the future to indefinite academic staff. While UW-Superior does not currently employ any indefinite academic staff, we find the draft to contain language that concerns us on behalf of our colleagues.

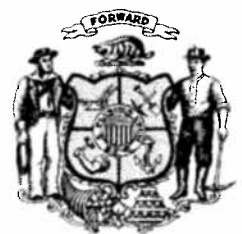
Specifically, we find the following areas of great concern:

- Lack of clear definitions of "seriously impairs the *public trust* in the university"(1)(b) and "the *efficiency* of the colleagues and students..." (1)(c)2. These terms are vague and difficult to measure.
- The policy draft is directed at those who have only been charged with a felony, not convicted. This impedes the assumption of innocence, and if found innocent, could have serious repercussions for the individual at a later time.
- It does not appear necessary that the felony charge be related to the employee's job duties or function.
- The policy as written allows the Provost and/or the Provost's appointed investigator substantial control in the dismissal of a faculty member.

Therefore, we support our Faculty Senate in rejecting UWS 7 as proposed.



# WISCONSIN STATE LEGISLATURE





# Memo

TO: Senior Vice President Cora B. Marrett  
CC: Chancellor Betz

FROM: Academic Staff Council, UW-River Falls  
Sarah Egerstrom, Chairperson

DATE: May 1, 2006

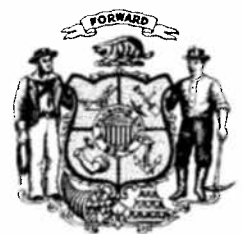
RE: Request for Feedback to UWS 7

As requested, here is a brief summary of the concerns about the draft of UWS 7 and the proposed disciplinary process for serious criminal misconduct:

- The language in the current draft does not address academic staff, although it is assumed that the policy would be extended to include this group. If this policy intends to include academic staff, the language needs to reflect both groups. A determination also needs to be made about whether it is appropriate for the misconduct to be reported to the Provost for both faculty and academic staff – many academic staff have no reporting lines to the Provost.
- The definition of “criminal misconduct” is open to broad interpretation.
- The current draft does not require a charge or conviction before dismissal of the employee.
- The current policy assumes guilt before legal process is completed and imposes a penalty before the completion of due process.
- 7.02 (b and c) are based entirely on opinion which is not appropriate for the dismissal of a university employee.
- 7.06 (2) It is unlikely that the Provost would have access to the investigative records needed to make a judgment about suspending the employee.
- The time limits are too short to conduct a thorough and fair investigation.
- Our greatest concern is over suspension without pay and especially protection of benefits while an investigation is pending. This is particularly important if charges are dropped or a person is found innocent. The employee should receive back pay/benefits if the Chancellor or Board later determines that an employee should not have been dismissed.



# WISCONSIN STATE LEGISLATURE



May 4, 2006

To: Chancellor Martha Saunders  
Senior VP Cora Marrett

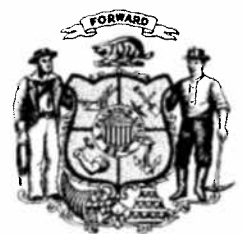
From: Michael Cohen, Academic Staff Chair

The Academic Staff Assembly of UW-Whitewater has discussed the draft policy changes to chapter UWS 7, Wisconsin Administrative Code, procedures for dismissal in special cases. We essentially share the concerns already brought forward by other Governance groups and summarized in the two-page attachment. In addition to those concerns we would like to add some additional language to some items and point out one area of disagreement.

1. Under Shared Governance concerns, we believe there should be a set of “guiding principles” for Academic Staff when creating or amending policy at the System-wide level. Maybe there needs to be a process or structure.
2. We share the concerns that “serious criminal misconduct” is open to broad interpretation.
3. If reassignment in lieu of suspension without pay is acceptable, we would like to add the option of a staff member requesting a suspension without pay if the reassignment is not acceptable.
4. If the Chancellor or Board of Regents determine that a staff member should not have been dismissed a letter of explanation should be provided along with back pay.
5. Under suggested changes in UWS 7.02, we believe that the amount of time involved between charges and conviction can be too long. Therefore “serious criminal misconduct” means being charged with or engaging in behavior that constitutes the commission of a felony, and that:



# WISCONSIN STATE LEGISLATURE



To: Cora B. Marrett  
CC: Senior Vice President for Academic Affairs  
Date: May 1, 2006

From: John Beaver  
Associate Professor of Physics and Astronomy  
University of Wisconsin – Fox Valley  
UW Colleges Senate Steering Committee Chair  
UW Colleges Faculty Representative

RE: UW Colleges response to the draft of UWS 7

Dear Senior Vice President Marrett,

The UW Colleges Senate met on March 3, 2006 and adopted the following position paper and resolution regarding UWS 7, the proposed addition to the UW System Administrative Code. The paper and resolution were adopted by the combined Faculty and Academic Staff Senate. Although UWS 7 only addresses Faculty, the Senate felt that it was of direct interest to Academic Staff as well, since a forthcoming chapter pertaining to Academic Staff would likely mirror UWS 7 in important ways. The resolution and position paper were adopted with only one dissenting vote.

The Senate considered draft 8 of UWS 7 in its deliberations, and since that time Regent Spector has put forth some clarifications. We greatly appreciate his efforts in this regard, and we welcome the clarifications and note that they do somewhat mitigate a couple of minor points in the UW Colleges Senate resolution. The Senate Steering Committee feels, however, that the most important points are unaffected and the overall thrust of the attached resolution and position paper remains unchanged.

Thank you for your energetic commitment to the process of shared governance.

Sincerely,

John Beaver

**University of Wisconsin Colleges  
Faculty Senate Position Paper**

Concerning

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

**Adopted by the UW Colleges Senate  
March 3, 2006**

**Executive summary of the Senate's position**

The Faculty Senate of the University of Wisconsin Colleges wishes to express serious reservations about the documents proposing new disciplinary procedures for faculty who have engaged in Serious Criminal Misconduct. While we agree that such behavior both damages the University's reputation and harms the mission of faculty to engage in teaching, research and service to the Wisconsin community, we assert that the haste with which this policy was produced has resulted in documents that are likely to cause more problems than they purport to solve. Our reservations are listed in this paper.

**Item 1: The documents demonstrate disregard for due process and contain ambiguities that could be used to circumvent due process.**

- UWS 7.02(1) states that serious criminal conduct is defined as "engaging in behavior that constitutes commission of a felony," an ill-defined standard.
- The Proposed Chapter does not require any formal legal charges to be filed. A tenured faculty member therefore could be dismissed based simply on "credible information" [UWS 7.05 (1)], with no established standard of credibility.  
Provosts are required to make judgments concerning probable cause, for which they do not have sufficient legal training.
  - Judgments by provosts would be based on evidence collected by an investigator appointed by that provost; no qualifications are specified for such investigators.
  - Provosts are interested parties in the proceedings. Due process demands that disinterested parties hear evidence and hand down judgments.
  - Even if legal charges were to be filed, the proposed timeline would require provosts to hand down judgments while law enforcement officials were still conducting an investigation.
  - The Proposed Chapter [UWS 7.05(8)] states: "The burden of proof shall be a preponderance of the evidence." There is no standard of credibility of the source or nature of the evidence.  
If prosecutors over-charge in order to get a plea, as often happens, this process could be set in motion in the case of a fairly minor offense.
  - Even if a faculty member is exonerated, the process of suspension before conviction of a crime does irreparable harm to the faculty member's reputation and standing within the university and professional communities.

**Item 2: Shared governance has been unfairly disregarded during the process of developing the Proposed Chapter.**

The Proposed Chapter is not "subject to shared governance review." Under Wisconsin Statutes, changes to Chapter 36 must be approved by shared governance.



The process of drafting the Proposed Chapter has failed to take into account the perspective of the primary stakeholders – the faculty of the University of Wisconsin System.

**Item 3: The Senate believes that the measures proposed are counterproductive.**

- The Proposed Chapter, if adopted, could result in suits for defamation, wrongful termination of employment and deprivation of civil rights, should a faculty member be suspended or dismissed and exonerated later in a court of law.

**Resolution Regarding the Proposed UWS 7  
Addition to the UW System Administrative Code,  
adopted by the UW Colleges Senate  
March 3, 2006**

Whereas the draft of a new addition to the UWS Administrative Code was completed and transmitted to the Board of Regents with no input from the system of shared governance that represents constituencies strongly affected by the proposed change, and;

Whereas a major change to the UW System personnel policies, with far-reaching effects, is being instituted with undue speed, suggesting that quickly appearing to "do something" has taken precedence over crafting a sensible policy, and;

Whereas a hastily drafted policy that does not preserve the rights of due process could result in serious legal trouble in the future, and;

Whereas three cases out of 6000 faculty, representing approximately 7 thousandths of one percent of the UW System budget, are driving a rush to placate critics of the UW System;

Whereas the legality of the proposed change is questionable, and;

Whereas the decision to suspend without pay is made without due process, and sections 3a and 3b of UWS 7 state that it may be imposed as a penalty, in that redress of back pay may be withheld even in cases where the faculty member is not ultimately dismissed, and;

Whereas suspension without pay represents a loss of livelihood, reputation and research career, and is thus a penalty even if back pay is eventually redressed, and;

Whereas the Provost will have little ability to conduct an investigation while a criminal investigation is ongoing, and so the penalty of suspension without pay could be for a prolonged period of time, and;

Whereas the definition in UWS 7 of "Serious Criminal Misconduct" does not even require that a faculty member be charged with a felony, let alone convicted, and;

Whereas the definition in UWS 7 of "Serious Criminal Misconduct" requires the Provost to determine whether a faculty member has engaged in "behavior that constitutes the commission of a felony" even though the Provost is in no position to make such a judgment.

Therefore, be it resolved that the UW Colleges Senate implores the Board of Regents to reject UWS 7 as drafted, and;

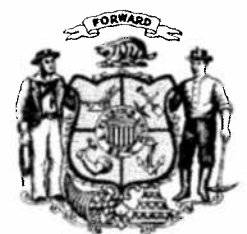
Furthermore be it resolved that the UW Colleges Senate emphatically requests that the Board of Regents involve Shared Governance bodies more meaningfully in the process of drafting a new UWS 7, and;

Furthermore be it resolved that the UW Colleges Senate insists that UWS 7 be drafted such that suspension without pay be instituted only in cases where a faculty member has been *convicted* of a felony.

Furthermore be it resolved that the UW Colleges Senate asks the Board of Regents to slow down the process of drafting a new UWS 7, and any similar policy that would affect Academic Staff, in order to insure that a workable policy is adopted.



# WISCONSIN STATE LEGISLATURE





*Jade*

4 May 2006

Regent President David Walsh  
University of Wisconsin System Board of Regents  
1860 Van Hise Hall  
1220 Linden Drive  
Campus

Dear Regent Walsh:

Enclosed herein is Faculty Document 1897a, the UW-Madison faculty's response to the regents' proposed Wisconsin Administrative Code, UWS 7, Procedures for Dismissal of Faculty in Special Cases. This document was adopted by the UW-Madison Faculty Senate at its meeting on 1 May 2006. The document can also be accessed at: <http://www.secfac.wisc.edu/senate/2006/0501/1897a.pdf>

Please let me know if you have any questions.

Sincerely,

David Musolf  
Secretary of the Faculty

Enclosure

c: Chancellor John Wiley  
Provost Patrick Farrell  
President Kevin Reilly  
Senior Vice President Cora Marrett ✓  
General Counsel Patricia Brady  
University Committee

Secretary of the Faculty

As amended and adopted on 1 May 2006

**University Committee Resolution Regarding the UW-Madison Faculty's Response to the Regents' Proposed Wisconsin Administrative Code, UWS 7 Procedures for Dismissal of Faculty in Special Cases**

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**Introduction**

Prompted by public response to selected cases of faculty and staff disciplinary problems, the University of Wisconsin System regents created a special committee to propose ways to expedite the UWS 4 disciplinary process in exceptional situations. The committee, consisting of three regents, a chancellor, a faculty member, and UW System general counsel, with input from others, drafted an addition to the Wisconsin Administrative Code, the proposed UWS 7, Procedures for Dismissal of Faculty in Special Cases. The proposed rule was presented to the faculty senates across the UW system in Spring 2006. This document represents the UW-Madison faculty response to that proposed rule.

Existing administrative code, UWS 4 and UW-Madison *Faculty Policies and Procedures*, chapter 9, provide ample guidance for handling situations of serious misconduct involving faculty members. In exceptional circumstances, i.e., when a faculty member is charged with, pleads guilty or no contest to, or is convicted of a felony, guidance beyond that provided in UWS 4 and *FPP* 9 is needed for two aspects: clarifying the conditions under which a faculty member may be suspended, and providing for rapid action in a way that both protects the faculty member's right to due process while promoting a safe workplace. The revised provisions of the proposed UWS 7, provided herein, were created by the University Committee with advice from the Faculty Senate and key faculty members, to meet the demand for an expedited process while balancing individual rights with public good.

**Chronology**

The regents' proposed UWS 7 was presented to the UW-Madison faculty at the March 2006 Faculty Senate meeting, which Regent Michael Spector, chair of the regents' special committee, attended. Through discussion with the Faculty Senate acting as a "Committee-of-the-Whole", faculty input was obtained. Reporting out from the Committee-of-the-Whole, the Faculty Senate directed the University Committee to reject the regents' proposed UWS 7 and propose new language.

The University Committee discussed the proposed UWS 7 language and goals at six of its meetings through March and April, receiving consultation from faculty members, legal counsel, and representatives of TAUWP. The University Committee also met with Regent President David Walsh to refine its understanding of the regents' special committee's deliberations. An interim version of a UW-Madison's revision of the regents' proposed UWS 7 was prepared and summarized at the Faculty Senate in April 2006, with a plan to take action at the May 2006 meeting. At the April 2006 meeting the Faculty Senate directed the University Committee to continue to formulate a revision to the proposed UWS 7 language, restricting its application to only those situations in which a faculty member is charged with a felony. In this regard, the University Committee, in consultation with other faculty, has also included pleading guilty or no contest to, or is convicted of a felony in the revised language. In addition, the University Committee worked with the faculty appointee to the regents' special committee and with individual faculty members to craft the revised version of the proposed UWS 7 provided herein.

**Key points of the Revised Version of the Proposed UWS 7**

The revised provisions of the proposed UWS 7 are designed to address faculty and university concerns when a faculty member is charged with, pleads guilty or no contest to, or is convicted of a felony. The process outlined in the revised provisions of the proposed UWS 7 is not designed to resolve the initiating complaint; rather, it provides for an expedited approach to addressing faculty suspension from the

(continued)

university only in the exceptional case when the individual is charged with, pleads guilty or no contest to, or is convicted of a felony with a nexus to the university. The provisions of UWS 4 address resolution of the initiating complaint, including due process.

Expedited disciplinary procedures would be invoked only when two conditions are satisfied: (1) a faculty member has been charged with, pleads guilty or no contest to, or is convicted of a felony, and (2) the conduct does substantial harm to the university or represents a substantial safety risk to the university. The revised provisions of the proposed UWS 7 would provide for expedited suspension with or without pay, and a process for dismissal when these conditions are satisfied. In all cases, the revised provisions of the proposed UWS 7 are intended to supplement, not replace, the provisions regarding dismissal contained in UWS 4.

The revised version of the proposed UWS 7 provides an escalation of process with the escalation of severity of action. In the event of a felony charge, suspension with pay may be invoked by the chancellor upon consultation with chairs of appropriate faculty committees. Suspension without pay by the chancellor requires determination by an appropriate faculty committee, after a review of the preliminary information, that substantial likelihood exists for a finding for dismissal, and may occur following charges, guilty or no contest plea, or conviction of a felony. Dismissal proceedings would follow the existing procedures contained in UWS 4.

Faculty consultation is required at all points of the process in the revised provisions to the proposed UWS 7. Faculty consultation would be provided by standing committees as provided in UWS 4. Involvement of two different committees would be necessary – one to make a determination regarding suspension with or without pay, and another for the dismissal process. At UW-Madison, the University Committee would be the appropriate body for the suspension determination review, and the Committee on Faculty Rights and Responsibilities would serve in the dismissal process. Thus, a faculty member's rights to a fair and unbiased hearing for dismissal would be preserved.

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**Resolution:**

**Whereas**, the faculty of the University of Wisconsin-Madison stand in agreement with the board of regents that prompt attention to faculty discipline best serves the state, its citizens, the university, and the faculty member, and

**Whereas**, the most prudent action to enable prompt attention is likely to arise as an extension of existing legislation, administrative rules, and faculty policies and procedures, and

**Whereas**, collaboration with many faculty members has resulted in language that best addresses the need to protect the safety and operation of the university when individuals who have committed serious misconduct remain on the job in a way that impairs the function of the university, and

**Whereas**, the spirit of faculty governance is best addressed through collaborative problem-solving and rule-making with the board and its several faculties of the University of Wisconsin System,

**Therefore, be it resolved**, that the faculty of the University of Wisconsin-Madison does endorse and send for counsel to the University of Wisconsin System Board of Regents the following amended language to the proposed UWS 7.

(continued)

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

**UWS 7.01 Declaration of policy** University faculty members are responsible for advancing the university's missions of teaching, research and public service. The fulfillment of these missions requires public trust in the integrity of the institution. The university's effectiveness and credibility are undermined by felonious conduct that poses a substantial risk to the safety of others, that seriously impairs the public trust in the university or the university's ability to fulfill its missions, or that interferes with performance of the duties of a faculty member. Situations involving such felonious conduct by faculty members must be addressed and resolved promptly to ensure that public trust is maintained and that the university is able to advance its missions. The board and its several faculties therefore adopt the procedures in this chapter for identifying and responding to those instances in which a faculty member has been charged with, has pled guilty or no contest to, or has been convicted of a felony pursuant to the provisions of UWS 7.02.

**UWS 7.02 Cause for initiation of suspension or dismissal proceedings in special cases**

(1) Proceedings consistent with UWS 4.01 shall be initiated by the chancellor upon receipt of credible information via complaint, self report or public report that a faculty member has been charged with, has pled guilty or no contest to, or has been convicted of those felonies in state or federal court that are based on conduct involving:

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

and that the conduct does substantial harm to the university or represents a substantial safety risk to the university.

(2) If a faculty member is charged with, pleads guilty or no contest to, or is convicted of any felony under state or federal law, he or she will report this fact to the chancellor, so long as such reporting does not violate the faculty member's right against self-incrimination.

**UWS 7.03 Rapid response**

(1) After commencement of this dismissal procedure, if after consultation with chairs of appropriate faculty committees the chancellor finds that substantial harm to the university or that a substantial safety risk to the university will result if the faculty member is continued in his/her current position, the faculty member may be immediately restricted in some, or relieved of some or all of his/her duties with pay.

(2) Suspension under this section will not exceed 60 days.

**UWS 7.04 Expedited process regarding suspension without pay**

(1) The chancellor may suspend the faculty member without pay pending a final decision in dismissal proceedings. A faculty member can be suspended without pay in only exceptional circumstances when all of the following conditions are met:

- (a) cause for dismissal as contained in UWS 7.02;

(continued)

- (b) an appropriate faculty committee determines that substantial harm or a safety risk to the university may result if the faculty member continues in his or her position;
- (c) an appropriate faculty committee determines, after a review of the preliminary information, that substantial likelihood exists for a finding for dismissal.

(2) Suspension without pay may occur only after attending to the faculty member's right to be heard. This shall be afforded to the faculty member through a proceeding before the appropriate faculty committee to determine whether the conditions in UWS 7.04 (1)(a), (b), and (c) apply. The proceedings under UWS 7.04 must commence within 30 days of the determination that the conditions of UWS 7.02 have been satisfied. The faculty member's rights under UWS 7.04 shall include the following:

- (a) service of a written notice to the faculty member of the proceeding 10 days before the proceeding;
- (b) the right of the faculty member to present a written or verbal response to the appropriate faculty committee.

(3) Suspension without pay continues until resolution under UWS 7.05 is reached or the charges pursuant to UWS 7.02 are dismissed or the faculty member is found innocent.

(4) Should the requirements for suspension without pay not be met, the chancellor may continue the suspension with pay pursuant to UWS 7.03.

**UWS 7.05 Dismissal upon guilty plea, no contest plea, conviction of a felony**

(1) Guilty plea, no contest plea or conviction of those felonies under state or federal law as referenced in UWS 7.02 may constitute just cause for dismissal of a faculty member, subject to the limitations of Wisconsin Statutes §111.335. Dismissal proceedings upon guilty plea, no contest plea, or conviction of those felonies defined by UWS 7.02 shall be governed by the process specified in UWS 4.01-4.10. A finding for dismissal on these grounds must be based on clear and convincing evidence in the record that the conditions of UWS 7.02 have been met.

(2) These proceedings as governed by UWS 4 shall be initiated within 30 days of guilty plea, no contest plea or conviction of a felony.

(3) Changes to the time frame under this section may be granted by the chair of the faculty hearing body as defined in 4.03 based on circumstances beyond the control of the faculty hearing body.

**UWS 7.06. Reimbursement** If the dismissal proceedings are resolved in favor of the faculty member, all pay and benefits withheld will be returned to the faculty member, unless, at the conclusion of dismissal proceedings, suspension without pay is determined to be an alternative penalty to dismissal.

(continued)



**Appendix A**

**Note: UWS 7.02** Not all felony charges are grounds for faculty suspension and dismissal. UWS 7 is intended to expedite university action to the most egregious forms of faculty misconduct. It is implicit that such felonies have the potential of seriously impairing faculty members' abilities to perform their duties and/or negatively disrupting the work of other faculty, students and staff. This process is intended to address the situation of when a faculty member is charged with, pleads guilty or no contest to, or is convicted of a felony and is not intended to address a complaint or preclude later action under UWS 4.

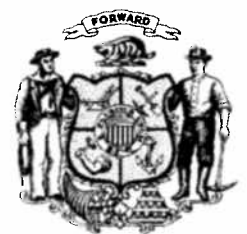
**Note: UWS 7.03** This section follows UWS 4.09, but removes ambiguity about when suspension with pay can occur.

**Note: UWS 7.04** For situations of such serious nature where a faculty member is incarcerated or suspended with pay pursuant to UWS 7.03, such that the faculty member cannot continue to meet his/her professional obligations to the state of Wisconsin, suspension without pay should be considered. Substantial harm to the institution may involve safety risk to faculty, students and/or staff, or an economic threat such as in the mismanagement of funds or resources. Because of the potential punitive impact to the faculty member of being denied pay, it is important to balance timely action by the university with the faculty member's right to respond to the charges in his/her defense. Because the magnitudes of suspension without pay versus dismissal are different, the procedures protecting faculty rights are different than those for dismissal in UWS 4. The faculty committee in UWS 7.04 shall be different from the faculty committee specified in UWS 7.05.

**Note: UWS 7.05** Dismissal proceedings for faculty members are fully articulated with due process in UWS 4. Included here is the requirement that in the egregious cases defined in UWS 7.02, that dismissal proceedings are initiated as soon as possible



# WISCONSIN STATE LEGISLATURE



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April 24, 2006

To Dr. Richard Wells, Chancellor  
UW Oshkosh

Dr. Cora B. Marrett, Senior Vice President for Academic Affairs  
UW System

From Bryan L. Bain, Senator & UW System Representative  
UW Oshkosh Senate of Academic Staff

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

As requested by Senior Vice President Marrett, I am providing both of you the response of the UW Oshkosh Senate of Academic Staff to the proposed Chapter UWS 7 of the Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases.

The Senate of Academic Staff has expressed concern with the proposed Chapter UWS 7. While we understand the current proposal addresses faculty only, it is our understanding that a proposal targeting academic staff will soon follow. Furthermore, this action indicates the support of our faculty colleagues and our stance on the current proposal as written.

Enclosed is a letter from Jane Wypiszynski, President, Senate of Academic Staff, to Jim Simmons, President, Faculty Senate, pertaining to recent action taken by the Senate of Academic Staff. On April 06, 2006, the Senate of Academic Staff unanimously voted to approve a Faculty Senate resolution regarding the proposed Chapter UWS 7 (see resolution attached to the letter from Wypiszynski to Simmons). Additionally, at the April 20, 2006 meeting, the Senate of Academic Staff unanimously voted to approve its own resolution regarding the proposed Chapter UWS 7 (see enclosed).

It is my understanding that this information will be shared with the Board of Regents, specifically the Special Committee on Faculty and Academic Staff Disciplinary Process. Please contact me at (920) 424-3262 or [bain@uwosh.edu](mailto:bain@uwosh.edu) with any questions.

C: Jane Wypiszynski, President, Senate of Academic Staff  
Jim Simmons, President, Faculty Senate  
UW Oshkosh Senate Office

Enclosures

University of Wisconsin Oshkosh

Oshkosh, Wisconsin 54901

The University of Wisconsin Oshkosh is an Equal Opportunity Employer/Affirmative Action Institution



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April 7, 2006

Jim Simmons, President  
UW Oshkosh Faculty Senate

Jim,

At its April 6, 2006 meeting the UW Oshkosh Senate of the Academic Staff unanimously voted to approve the Faculty Senate's "Resolution Concerning Proposed UWS Chapter 7: Procedures for Dismissal in Special Cases.



Jane Wypiszynski, President  
UW Oshkosh Senate of the Academic Staff

Cc: Bryan Bain, SAS UW System Academic Staff Representative

**RESOLUTION CONCERNING PROPOSED UWS CHAPTER 7**  
**Procedures for Dismissal in Special Cases**

Whereas the faculty of the University of Wisconsin are responsible for advancing the University's mission of teaching, research, and service; and

Whereas a faculty member engaging in serious criminal activity that poses a substantial risk to the safety of the University community or that seriously impairs the faculty member's fitness or ability to fulfill his or her duties can be a serious impediment to the carrying out of the University's mission; and

Whereas the presumption of innocence, the right not to be compelled to testify against oneself, and the right to due process prior to the forfeiture of life, liberty, or property are fundamental principles of American law; and

Whereas Wisconsin Statutes 111.321-2 and 111.335 bar employment discrimination on the basis of a person's record of arrest or conviction unless the charges are substantially related to the circumstances of the particular job; and

Whereas the administrative officers and standing faculty committees of the University of Wisconsin are not competent by training or experience to investigate or adjudicate criminal charges;

And whereas the current draft of proposed UWS Chapter 7 is not entirely consistent with the above principles, laws, and facts; therefore

**Be it resolved, that the Faculty Senate of the University of Wisconsin-Oshkosh:**

Endorses the efforts of the Board of Regents to provide for prompt disciplinary action when a faculty member has been convicted of serious criminal activity that poses a substantial risk to the safety of the University community or that seriously impairs the faculty member's fitness or ability to fulfill his or her duties;

Reaffirms its endorsement of the principles of academic freedom, and the protection of conduct, expressions, or beliefs, the rights to which are secured by the Constitution;

Endorses the presumption of innocence, the right not to be compelled to testify against oneself, and the right to due process prior to the forfeiture of life, liberty, or property;

Urges the Board of Regents to adopt rules that are fully consistent with the above mentioned academic and legal principles;

And especially urges that University disciplinary proceedings must follow, not anticipate, legal proceedings, because the University is in no position to conduct criminal investigations, or adjudicate the results thereof, in a manner that is consistent with fundamental principles of due process, fairness, and justice.

**UNIVERSITY OF WISCONSIN OSHKOSH SENATE OF ACADEMIC STAFF  
RESOLUTION CONCERNING PROPOSED UWS CHAPTER 7  
Procedures for Dismissal in Special Cases**

Whereas the faculty and academic staff of the University of Wisconsin are responsible for advancing the University's mission of teaching, research and service; and

Whereas a faculty or academic staff member engaging in serious criminal activity that poses a substantial risk to the safety of the University community or that seriously impairs the faculty or academic staff member's fitness or ability to fulfill his or her duties can be a serious impediment to the carrying out of the University's mission; and

Whereas the presumption of innocence, the right not to be compelled to testify against oneself and the right to due process prior to the forfeiture of life, liberty or property are fundamental principles of American law; and

Whereas Wisconsin Statutes 111.321-2 and 111.335 bar employment discrimination on the basis of a person's record of arrest or conviction unless the charges are substantially related to the circumstances of the particular job;

And whereas the current draft of proposed UWS Chapter 7 is not entirely consistent with the above principles, laws and facts; therefore

**Be it resolved, that the Senate of Academic Staff of the University of Wisconsin Oshkosh:**

Endorses the efforts of the Board of Regents to provide for prompt disciplinary action when a faculty or academic staff member has been convicted of serious criminal activity that poses a substantial risk to the safety of the University community or that seriously impairs the faculty or academic staff member's fitness or ability to fulfill his or her duties;

Reaffirms its endorsement of the principles of academic freedom, and the protection of conduct, expressions or beliefs, the rights to which are secured by the Constitution;

Endorses the presumption of innocence, the right not to be compelled to testify against oneself and the right to due process prior to the forfeiture of life, liberty or property;

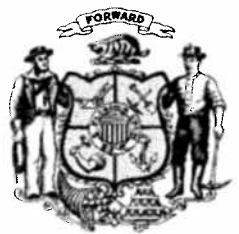
Urges the Board of Regents to adopt rules that are fully consistent with the above mentioned academic and legal principles;

And especially urges that University disciplinary proceedings must proceed in a manner that is consistent with fundamental principles of due process, fairness and justice.

**Approved unanimously by the University of Wisconsin Oshkosh Senate of Academic Staff  
by a voice-vote on April 20, 2006**



# WISCONSIN STATE LEGISLATURE





Senate Office  
Room 11, Harvey Hall

University of Wisconsin-Stout  
P.O. Box 790  
Menomonie, WI 54751-0790

715/232-1789  
715/232-1352

April 21, 2006

Regent Michael J. Spector  
Quarles & Brady, LLP  
411 E. Wisconsin Avenue  
Milwaukee, WI 53202

Dear Regent Spector:

The Senate of Academic Staff at UW-Stout has discussed the Disciplinary Process as it would relate to indefinite academic staff. We know that it has taken great effort on your part to come up with a process that is fair and appropriate, and we appreciate those efforts.

On April 11, 2006, the Senate of Academic Staff unanimously approved the process with certain concerns and recommendations. You will find them attached to this letter; the response is also being sent to System Administration.

Thank you again for your commitment.

Sincerely yours,

A handwritten signature in cursive script that reads "Viola Jones".

Viola Jones, Chair  
Senate of Academic Staff

Attachment

C. C. Sorensen  
C. Marrett



**DATE:** 4/12/06

**University of Wisconsin Board of Regents**

**FROM:** University of Wisconsin-Stout Senate of Academic Staff

**Review and Revisions of the Board of Regents Proposed Dismissal for Cause Procedure**

The University of Wisconsin-Stout Senate of Academic Staff reviewed the Board of Regent's proposed dismissal procedures. Although the proposal for dismissal that is under review was written as a faculty procedure, Regent Spector in his summary document states,

"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 proposed procedures then can only be applied to those academic staff with indefinite appointments and not to fixed term or probationary academic staff.

After careful review of the Board of Regent's proposed dismissal procedures the Senate of Academic Staff has identified a number of issues. These issues include:

- The assumption of guilt before a staff member is convicted of a felony.
- Stopping pay before a staff member has been convicted.
- An expedited process for dismissal or an imposed penalty for leave without pay should minimize the potential for litigation over due process rights.
- The empowerment of a provost or other interested party to make a decision while a criminal investigation is ongoing.
- The need to require a standard of proof for a judgment of serious criminal misconduct equal to the standard applied in criminal proceedings.

It is the understanding of the Senate of Academic Staff that these proposed procedures were developed for:

- Expediting the process for dismissal for cause.
- Stopping pay while an academic staff member is on suspension.

The Senate contends that there is a procedure in place in UWS 11 which delineates the process for dismissal for cause and that the proposed BOR procedure is duplicative.

Three specific concerns with the proposed procedures relate to UWS 7.05 the Expedited Process, the empowerment of the Provost, in the same section (a) and (b) which relates to the appointment and disqualification of an investigator, and in UWS 7.04 Reporting Responsibility.

First, on the UW-Stout campus as well as others in the UW System the provost does not supervise all academic staff for all units or departments, therefore either the provost would have to be delegated that authority by the Chancellor, or other division administrators would have to assume that responsibility.

Second, UWS 7.05 (a) and (b) needs further clarification since as it is written that an investigator could be disqualified and succeeding appointed ones could also be disqualified. This could be an endless loop before one qualifies to investigate the dismissal causing possible lengthy delays in the process.

Third, UWS 7.04 Reporting Responsibility could be construed as an admission of guilt before a conviction has been determined. It would seem that an academic staff member should or would not be compelled to report their conduct.

It should be noted that UWS 4 as written in UWS 7.05 (3), (3)(b), (4), and 7.06 (4) were changed to UWS 11 as UWS 4 are dismissal for cause procedures for faculty and UWS 11 are the corresponding procedures for academic staff. Also UWS 6 Complaints and Grievances is for faculty and UWS 13 for academic staff as written were changed in UWS 7.05 (5)(b) for the same reason.

In reviewing the proposed procedure the senate was fortunate to have a copy of UW-Whitewater's Faculty Senate review of the process. The committee was in agreement with most of UW-Whitewater's findings. The changes and additions to the language of the dismissal document pertain to the adaptation for academic staff from faculty language and the incorporation of language from the UW-Whitewater document revisions.

Proposed Chapter UWS 7, Wisconsin Administrative Code  
Procedures for Dismissal of Faculty Academic Staff Convicted of a Felony in Special  
Cases

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

**UWS 7.02 ~~Serious criminal misconduct~~ *Felonious conduct*** "~~Serious Criminal Misconduct~~ *Felonious Conduct* " means ~~engaging in behavior that constitutes the commission that an academic staff member has been convicted of a felony, and that~~ *which,*

- (a) Clearly poses a substantial risk to the safety of members of the university community or others; or
  - (b) Seriously impairs ~~the public trust in the university and~~ the university's ability to fulfill its teaching, research or public service missions; or
  - (c) Seriously impairs:
    1. ~~The faculty academic staff member's fitness or ability to fulfill the duties of his or her position. or~~
    2. ~~The efficiency of the colleagues and students with whom he or she works.~~
- (2) Conduct, expressions, or beliefs which are constitutionally protected, or protected by the principles of academic freedom, shall not ~~constitute Serious Criminal Misconduct~~ *apply under this section.*
- (3) Except as otherwise expressly provided, ~~an faculty academic staff member who has engaged in behavior that constitutes Serious Criminal Misconduct~~ *has been convicted of a felony* shall be subject to the procedures set forth in ss. UWS 7.03-7.06.

**UWS 7.03 Dismissal for cause.** (1) Any *faculty academic staff* member having *tenure indefinite status* may be dismissed ~~only by the board~~ *by the chancellor and only for just cause and only after due notice and hearing with the decision deemed final unless the board, upon request of the academic staff member, grants review based on the record.* Any *faculty academic staff* member having a probationary appointment may be dismissed prior to the end of his or her term of appointment only by the ~~board~~ *chancellor* and only for just cause and only after due notice and hearing.

(2) Just cause for dismissal under this section includes, but is not limited to, ~~Serious Criminal Misconduct, as defined in s. UWS 7.02~~ *conviction of a felony and a finding of 7.02 (1) (a), (b), and/or (c).*

~~**UWS 7.04 Reporting responsibility.** Any *faculty academic staff* member who engages in *Serious Criminal Misconduct* shall immediately report that fact to the provost or division administrator.~~

**UWS 7.054 Expedited process.** (1) Whenever the provost or division administrator of an institution within the university of Wisconsin system receives a *credible report* under ~~s. UWS 7.04 or other credible information~~ that an *faculty academic staff* member has engaged in ~~*Serious Criminal Misconduct*~~ *has been convicted of a felony or where the provost or division administrator has determined to impose a suspension without pay pending the final decision as to dismissal under s. UWS 7.06,* the provost or division administrator shall:

(a) Within three working days of receipt of the credible report ~~or information,~~ inform the *faculty academic staff* member of its receipt and, after ~~consultation with~~ *notifying the* appropriate institutional governance representatives, appoint an investigator to ~~investigate the report or information~~ *determine whether 7.02 (1), (a), (b), and/or (c) may apply;*

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

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

(3) Within three working days of receipt of the investigator's report, the provost or division administrator shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the *faculty academic staff* member pursuant to this chapter, to seek dismissal of the *faculty academic staff* member pursuant to ch. UWS 4-11, to seek an alternative disciplinary sanction, or to discontinue the proceedings.

- (a) If the provost decides to seek dismissal of the *faculty academic staff* member pursuant to this chapter, the provost *or division administrator* shall file charges within two working days of reaching the decision.
- (b) If the provost *or division administrator* decides to seek dismissal of the *faculty academic staff* member pursuant to ch. UWS 4 11, the provost *or division administrator* shall file charges and proceed in accordance with the provisions of that chapter and implementing institutional policies.
- (c) If the provost *or division administrator* decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 6, and implementing institutional policies, shall be followed.
- (4) If charges seeking dismissal are filed under par. (3)(a), the *faculty academic staff* member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 4.03 11.03. The hearing shall provide the procedural guarantees enumerated under s. UWS 4.05-4.06 11.05-11.06 except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.
- (5) Upon receipt of the findings and recommendation of the committee under par. (4), the chancellor shall, within three working days, prepare a written recommendation on the matter.
- (a) If the chancellor's recommendation is for dismissal, the recommendation shall be transmitted to the board of regents for review.
- (b) *Subject to ch. UWS 6 13 and implementing institutional policies, dDD*Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final unless the board at its option grants a review on the record at the request of the faculty member.
- (6) Upon receipt of the chancellor's recommendation, the full board shall review the record before the institutional hearing committee, and may offer an opportunity for filing exceptions to the recommendation, or for oral argument. The full board shall issue its decision on the matter within 15 working days of receipt of the chancellor's recommendation.
- (7) If an *faculty academic staff* member whose dismissal is sought under par. (3)(a) does not request a hearing, the board shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.
- (8) The burden of proof shall be a ~~preponderance of the~~ *on the provost to demonstrate evidence of a conviction for a felony and that 7.02, (1), (a), (b), and /or (c) apply.*

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

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

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

(a) The *faculty academic staff* member has been charged with *convicted of a felony* and the provost or *division administrator* finds, in addition, that one or more of the elements of serious criminal misconduct listed in s. UWS 7.01(a) - (e) are present, and that there is a substantial likelihood that the *faculty academic staff* member has engaged in the conduct as alleged; it has been found that 7.02 (1) (a), (b), and/or (c) apply ;or

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

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

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

(3) If, after affording the *faculty academic staff* member the opportunity to be heard, the provost or *division administrator* and the appropriate *faculty academic staff* governance representatives determines to suspend without pay, the provost shall inform the *faculty academic staff* member of the suspension in writing. The provost's or *division administrator's* and the appropriate *faculty academic staff* governance representative's decision to suspend without pay under this section shall be final, except that:

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

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

(4) If, after affording the *faculty academic staff* member the opportunity to be heard, the provost *or division administrator* determines that the conditions in par. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 4.09- 11.08 shall apply.

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