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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)

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY PROCESS

Minutes of the Meeting

April 17, 2006

3:05 p.m.

Van Hise Hall

19<sup>th</sup> Floor Conference Room

Madison, Wisconsin

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

Committee Members Unable to Attend: None

Regent Spector reported that the deadline for the Committee to make its recommendation to the Board of Regents had been moved from the May meeting to the June meeting. This extension would allow time for governance bodies to complete their review of the proposed rules.

The purpose of this meeting was to review the kinds of comments being received. A list summarizing the comments was distributed and is attached to these minutes.

In response to an inquiry by Regent Rosenzweig, Ms. Brady indicated that submissions by governance groups would be due by May 5<sup>th</sup>. Regent Spector said that the Committee would meet again in May to review all comments that were received. All governance groups had been made aware of this schedule.

Regent Spector then went over the list of comments, which included areas of concern as well as suggestions for change. Stating that he was glad that input was being provided, he said that he believed what the Committee put forth was a solid basis for discussion and that it must be made clear that rules to deal with certain types of criminal misconduct do not threaten First Amendment rights or academic freedom.

Regent President Walsh added that governance groups understood the problem and were seeking solutions. He had met with the UW-Madison University Committee and heard their concerns.

In response to a question by Regent Rosenzweig as to next steps, Regent Spector said that, after the rest of the comments are received, an analysis would

be done and sent out on what the current rules provide, the Committee's proposal, suggestions for change, and the effect of those suggestions. This would be done between the May and June Board meetings.

Regent Smith expressed appreciation for the thoughtful comments that had been provided.

In addition to the written input, Professor Dickey indicated that he had met with the UW-Whitewater Faculty Senate, with the UW System Faculty Representatives, and with the UW-Madison University Committee, along with Regents Walsh and Spector. Ms. Brady added that she had met with the Faculty Representatives as well, and with the Academic Staff Representatives.

Ms. Brady remarked that many of the comments were similar and involved definition of serious criminal misconduct, the issue of suspension without pay, burden of proof, and provision for back pay. She suggested that the analysis be organized around topic areas such as those.

Professor Dickey suggested a three or four page analysis showing proposed changes by category, how they would differ from the original proposal, and what impact they would have.

Professor Richard Schauer, of the American Federation of Teachers, reported that an alternative proposal drafted by the AFT had been circulated to all faculties.

Professor Mark Evanson, UW-Platteville, added that the proposal had been adopted by some campus governance bodies and was under consideration by others.

Professor Lawrence Kahan, UW-Madison, thanked the Committee for extending the deadline for responses and reported that the Faculty Senate expected to act on the matter at its May 1<sup>st</sup> meeting. The AFT proposal was one among a number of suggestions being considered.

Regent President Walsh observed that the comments received have been thoughtful and have raised issues worthy of discussion.

Professor Evenson noted that faculty senates have disagreed with the intent and provisions of the proposed rules. Therefore, he felt that the AFT proposal should be part of the discussion. Professor Schauer added that this proposal was part of the UW-Superior submission.

Russ Whitesel, Senior Staff Attorney for the Legislative Council, reminded the group that there also will be review at the legislative level, providing more opportunities for those who may disagree with the Regent position to present their views.

Regent Spector said that the Committee would meet to review all comments submitted and would proceed in the way described by Professor Dickey and Ms Brady.

It was agreed to schedule a meeting of the Committee on May 16<sup>th</sup> at 3:00 p.m. with in-person participation to the extent possible. A second meeting would be scheduled on May 25<sup>th</sup> at 1:00 p.m. if needed. It was agreed that material for the meeting would be sent out by May 12<sup>th</sup>.

With regard to the process for rule making, Regent Rosenzweig pointed out that, after the Board of Regents holds a hearing and submits a proposed rule, the legislative standing committee may also hold a hearing and take public testimony. The committee then may make changes to the proposed rule.

Mr. Whitesel added that governance body input and the hearing by the Board make the UW's process more inclusive than that followed by other rule-making bodies. The rules also would need to be sent to the Legislative Council for statutory authority and technical language review.

Professor Schauer referred to a 1994 court decision on a salary dispute at UW-Platteville in which the judge ruled that the board could not overrule the faculty where responsibilities overlap. He commented that no systematic way has been developed of coming to decisions on major policies.

Professor Kahan said that a statement of scope is required under Chapter 227 of the statutes. He added that s.36.13 of the statutes requires that rules for discipline and dismissal be jointly promulgated.

Professor Dickey thought that the Chapter 227 requirements would be triggered when the Board of Regents submits a proposed rule.

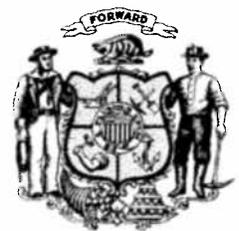
The discussion concluded and the meeting was adjourned at 4:10 p.m.

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Judith A. Temby, Secretary



# WISCONSIN STATE LEGISLATURE



May 12, 2006

To: Faculty and Academic Disciplinary Committee  
From: Pat Brady  
Re: Governance Group Comments on Proposed UWS 7

At the last meeting of the Faculty and Academic Disciplinary Committee, we agreed to review the comments of UW System governance groups on proposed UWS 7, and to identify common concerns and recommendations regarding the Committee's suggested approach. All institutions have now provided reactions to the Committee's proposal, ranging from general comments to suggested amendments to the language and alternative drafts of possible rules.

Although the institutional responses generally recognize the importance of ensuring that our disciplinary processes are adequate to address promptly and fairly cases involving criminal misconduct, concerns remain with several key aspects of the Committee's recommendation for addressing this issue. Not surprisingly, these concerns are centered on matters that have been the primary focus of the Committee deliberations, as well. The summary of input from governance groups prepared by Associate Vice President Ron Singer (attached) describes the concerns and alternative recommendations in detail. Taken together, however, the major concerns that appear to be common across the institutions are as follows:

- Definition of the conduct that would trigger application of the expedited disciplinary process, including possible suspension without pay. As proposed by the Committee, the expedited process, including the possibility of suspension without pay, would be triggered by engaging in felonious conduct that also poses a safety risk, or impairs public trust in the university, or impairs either the individual's own ability to fulfill his or her duties or the efficiency of colleagues and students.

Governance groups noted a variety of concerns with this proposal. A frequently-raised suggestion was to limit the conduct of concern to situations where the individual had been charged with, pleaded guilty or no contest to, or was convicted of a felony. A variation on this approach would further narrow the conduct of concern to certain types of serious felonies, such as those that cause serious physical injury to another, sexual assault, or theft.

Several institutions also suggested amending the Committee's language with regard to the *effects* of the criminal conduct. Some recommended dealing only with criminal conduct that poses a safety risk, while others suggested both a safety risk and impairment of public trust. Still others suggested different combinations of the Committee's proposed language.

- *Self-reporting requirement.* The Committee proposed requiring individuals to report "serious criminal misconduct" as defined to include engaging in conduct constituting a felony that meets the other tests noted above. A number of responses indicated that such a requirement raises questions about the constitutional right to be protected from self-incrimination. Additional concerns were expressed as to whether, in this context, the Committee's definition of "serious criminal misconduct" was adequate to fairly apprise an employee of the conduct to be reported.

To address these issues, several institutions recommended eliminating the reporting requirement altogether. Others suggested aligning the requirement with a re-definition of the conduct of concern, which would, in effect, mean the individual would be reporting only a charge, plea of guilty or no contest, or conviction of some type of felony.

- *Suspension without pay.* The Committee's proposal would allow the provost, after consultation with governance groups, to suspend without pay in cases involving a charge of serious criminal misconduct, as defined above, where there is "substantial likelihood" that the misconduct has occurred; or where an individual cannot report to work because of incarceration or terms of probation or parole; or where there has been a conviction of serious criminal misconduct.

Several institutions commented that a suspension without pay is a penalty and expressed concern that the process provided was not sufficient to impose this penalty. Several felt that clarification was needed with respect to the meaning of being "charged" with serious criminal misconduct, since the language does not indicate the source of such a "charge." Some believed that suspension without pay might be appropriate after conviction or incarceration, but not at the charging stage. Overall, there was a view that there be some mechanism for mandatory return of any pay lost, if an individual were exonerated. Other suggestions were to impose a 60-day suspension, with pay, and reassign the individual. Many institutions suggested either approval by or a full hearing before a faculty hearing committee before imposing any suspension without pay.

- Burden of proof. The Committee proposed that the burden of proof of just cause be a "preponderance of the evidence." This is the standard that is used in most civil cases, and the "preponderance" is often described as meaning 51% of the evidence. The standard of proof for a criminal conviction is "beyond a reasonable doubt," a much higher standard, requiring virtual certainty of guilt. Many comments suggested that the appropriate standard is "clear and convincing evidence," a middle level of proof between "preponderance" and "beyond a reasonable doubt." Some UW institutions have applied this middle standard to faculty disciplinary matters.
- Enlargements of time. Recognizing that even an expedited disciplinary process might need to be extended to accommodate the needs of the parties, the Committee provided for enlargements of time by the hearing committee, with the approval of the provost. Some groups suggested that the hearing committee have the discretion to grant such extensions, without need to consult with the provost.
- Role of the provost. The Committee's proposal places the provost in the position of making many of the decisions with regard to initiating the disciplinary process, ensuring a timely investigation, and following through on the disciplinary action and proceedings. Under current administrative rules, it is the chancellor of an institution who institutes these processes. Having the provost initiate the process, however, preserves the chancellor's neutrality in making the final institutional decision. A number of institutions suggested leaving institutions the option of assigning these responsibilities to either the provost or chancellor.

In addition to the comments on these matters, some groups expressed an overall feeling that the shared governance process had not been adequately observed in the course of the Committee's work. Some also indicated that UWS 4 remains a viable process that, with minor amendments, would satisfy the need for prompt disposition of egregious cases. Although it would be possible to incorporate the Committee's proposal in UWS 4 or existing rules for academic staff, the Committee believed that the unique problems associated with criminal misconduct would make separate treatment sensible.

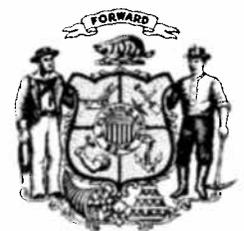
Our meeting on Tuesday will afford an opportunity to discuss the areas of common concern that have emerged from the governance review process, together with any of the more specific points summarized in Associate Vice President Singer's outline. Based on that conversation, we can determine whether changes in the Committee proposal are appropriate, and proceed with preparing our recommendations to the Board of Regents.

Attachment

c: Regent President Walsh  
System President Reilly



# WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY  
PROCESS

**Notice of Meeting**

Thursday, November 16, 2006

1:00 p.m.

1820 Van Hise Hall

1220 Linden Drive

Madison, Wisconsin

AGENDA

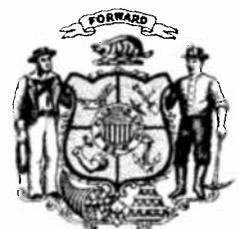
- ✓ 1. Approval of the minutes of the October 30, 2006 meeting of the committee
- ✓ 2. Meeting with academic staff and student representatives to discuss proposed rules.  
(1:00 – 2:00 p.m.)
- ✓ 3. Meeting with faculty representatives to discuss proposed rules (2:00 – 3:00 p.m.).
4. Consideration of recommendation to the Board of Regents.
5. Adjournment.

*Information regarding agenda items can be found on the web at <http://www.uwsa.edu/bor/meetings.htm> or may be obtained from the office of the secretary, 1860 Van Hise Hall, Madison, Wisconsin 53706 (608) 262-2324*

*Persons with disabilities requesting an accommodation to attend are asked to contact Judith Temby in advance of the meeting at (608) 262-2324*



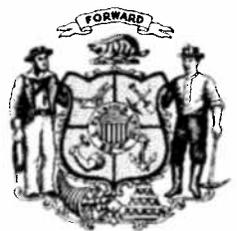
# WISCONSIN STATE LEGISLATURE







# WISCONSIN STATE LEGISLATURE



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

COMMITTEE REGARDING FACULTY/ACADEMIC STAFF DISCIPLINARY  
PROCESS

Minutes of the Meeting

October 30, 2006  
12:25 p.m.

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

Unable to Attend: None

Regent Spector presiding

The minutes of the October 17, 2006 meeting were revised to change the word "hour" to "days" in the first sentence of the second paragraph on page 5. With that revision, the minutes were approved, upon motion by Regent Rosenzweig, seconded by Chancellor Markee.

Regent Spector referred to revised draft rules that had been prepared pursuant to discussion at the October 17<sup>th</sup> meeting, Comments by the Legislative Council Rules Clearinghouse were helpful, he noted, adding that many were incorporated in the revised draft.

Changes that had been made included the following:

- s. UWS 4.09 was created in order to conform chapter UWS 4 with UWS 7 provisions for suspension without pay in certain cases.
- The definition of serious criminal misconduct in s. UWS 7.02 was changed to remove being charged with, but not being convicted of or pleading guilty or no contest to, one of the enumerated felonies.
- Also removed from s. UWS 7.02 was the stand-alone criterion of seriously impairing the public trust in the university. Faculty felt strongly that this criterion was vague and overly subject to discretionary interpretation.
- Reporting responsibility in s. UWS 7.04 was changed to make the provision limited to felonies of the type listed in s. UWS 7.02(1)(a).
- s. UWS 7.05 (1)(b) was re-written to provide for opportunity to request that alternative investigators be disqualified on grounds of lack of impartiality.
- Provision for suspension without pay was retained in s. UWS 7.06(1)(a) for a faculty member charged with serious criminal misconduct if it is found that there is substantial likelihood that the person engaged in the conduct as alleged.

- Similar changes were made to ch. UWS 11, pertaining to academic staff holding indefinite appointments.

Regent President Walsh presiding

Regent President Walsh suggested that s. UWS 7.05(b) be revised to add “or other cause” to “lack of impartiality” as reasons for disqualification of an investigator.

Regent Rosenzweig moved that s. UWS 7.05(b) be revised accordingly, and the motion was seconded by Professor Dickey.

Professor Dickey moved that the third sentence declaration of policy in s. UWS 7.01 be revised, as suggested by David Musolf, secretary of the faculty at UW-Madison, to state that: “The university’s effectiveness, credibility, and ability to maintain public trust are undermined by criminal activity that poses a substantial risk to the safety of others, 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.” The motion was seconded by Ms. Brady.

Regent Spector commented that this change would maintain the words “public trust” in the policy statement of the rule, while addressing concerns that it was overly broad and too subject to interpretation to include among the criteria in s. UWS 7.02.

Regent Rosenzweig stated her agreement with that assessment.

The question was put on the two proposed amendments, and they were adopted on a unanimous voice vote.

Professor Dickey moved that provision be made that, if a faculty member were suspended without pay and dismissal proceedings were commenced under ch. UWS 4, the expedited dismissal process of ch. UWS 7 could be invoked if the person were convicted of or pled guilty or no contest to the crime.

The motion was seconded by Regent Rosenzweig and adopted on a unanimous voice vote.

Ms. Brady referred to the provision in the revised rules for mandatory back pay if the person is not dismissed. If the person were to receive a lesser punishment, it would be taken out of his or her pay prospectively.

Regent President Walsh noted the possibility that a person could be suspended without pay for a semester while a dismissal proceeding was under way. If a decision were made not to dismiss that person but instead to impose a suspension without pay for a semester, he or she could end up receiving back pay for the first semester of suspension and then be suspended without pay for another semester.

Professor Dickey added that this kind of result would penalize the university through loss of an additional semester of teaching.

Regent President Walsh asked if there were cases in which lesser punishments were imposed after dismissal was originally sought; and Ms. Brady replied in the affirmative, citing a recent case in which the faculty member was demoted, rather than dismissed.

Professor Dickey moved that s. UWS 7.06 be revised to provide that, if a lesser penalty than dismissal is imposed, any period of suspension without pay be offset by period of any suspension without pay already served by the faculty member.

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

At the request of Regent Spector, Ms. Brady discussed comments made by the Legislative Council Rules Clearinghouse, noting that all but seven items had been addressed.

In the definition of serious criminal misconduct, the clearinghouse recommended removal of "pleading guilty" to a one of the enumerated felonies, on the grounds it is unnecessary since a plea of guilty would necessarily result in a conviction, which is already included in the definition.

Professor Dickey noted the distinction between a guilty plea and a conviction, remarking that there would be a time lapse between a plea and entry of judgment.

Ms. Brady recommended that it be retained in the definition and there was agreement with that recommendation.

With regard to suspension without pay, Ms. Brady noted that one of the conditions under which that could occur is inability to report for work. The clearinghouse pointed out that conviction of a misdemeanor or other circumstance could also result in being unable to work and asked if that is the intent of the rule.

Regent Rosenzweig suggested that the comment be answered by indicating that ch. UWS 4 could be employed in the case of a misdemeanor, and Professor Dickey added that the intent of ch. UWS 7 is not to cover misdemeanors.

In s. UWS 7.05, the clearinghouse suggested specifying the purpose of the investigation, defining the appropriate governance representatives and specifying minimal findings that must be made in order for the chancellor to proceed.

With regard to the first two suggestions, Ms. Brady indicated that these are matters that are understood and do not need specification. With regard to the third suggestion, she thought that it would not be wise to have the chancellor make such findings at the beginning of the process since he or she is the final decision maker. Rather, the findings should result from the faculty committee hearing.

While she agreed with the latter point, Regent Rosenzweig felt it might be beneficial to be more specific about the former points, particularly given the high level of scrutiny that this rule would receive.

Ms. Brady noted that governance representatives are formed on each campus and that not all groups have the same name.

Professor Dickey suggested that language be added to s. UWS 7.05(1)(a) to specify that the investigation will address whether to proceed with dismissal proceedings.

Regent Rosenzweig moved approval of that revision. The motion was seconded by Chancellor Markee and adopted on a unanimous voice vote.

Professor Robert Mathieu, Chair of the UW-Madison University Committee, indicated that, in s. UWS 7.06, the UW-Madison faculty preferred a standard of clear and convincing evidence, rather than substantial likelihood. He asked whether substantial likelihood is an adequate standard for the punitive action of suspension without pay and if there would be an investigation to provide a basis for the chancellor's decision on the question of suspension.

In response, Regent President Walsh indicated that substantial likelihood is a higher standard than the standard used in employment law. Professor Dickey added that, for dismissal, serious criminal misconduct must be found by clear and convincing evidence. For the preliminary decision of suspension without pay, substantial likelihood is a very high standard.

Regent President Walsh suggested that language be added to s. UWS 7.06 to incorporate the investigative report set forth in s. UWS 7.05 as the basis for the chancellor's decision.

Professor Richard Schauer, of The Association of UW Professionals, suggested that the words "charged with" be removed from the suspension without pay provision.

Professor Mark Evenson, President of The Association of UW Professionals said that the majority of faculty senates oppose suspension without pay. If the provision is retained, he suggested adding review of the investigative report with the faculty governance body and a determining role for faculty in deciding whether to take this punitive action. He also thought that the proposed rule caused the chancellor to be rushed into a decision on suspension without pay.

Regent President Walsh pointed out that there would be no time line requiring a decision on suspension without pay because needed evidence might not be available.

Speaking in support of retaining the suspension without pay provision, Professor Dickey pointed out that people are put in jail on the basis of probable cause, a lower standard than substantial likelihood.

Noting that existing rules did not work well in three recent cases, Regent President Walsh said that the public needs to have confidence that the university can move quickly and fairly when such cases arise.

Mr. Musolf asked if making a revision to ch. UWS 4 might be seen as opening the door to making other changes to that chapter.

Replying in the negative, Ms. Brady indicated that a cross reference in s. UWS 4.09 is needed.

Professor Dickey moved to revise the draft rules to provide that, before there can be suspension without pay, there must be completion of an investigative report pursuant to s. UWS 7.05 and a preliminary finding that the faculty member engaged in the criminal behavior as charged. The motion was seconded by Regent Rosenzweig and adopted on a unanimous voice vote.

The question was put on a motion by Regent Rosenzweig, seconded by Professor Dickey, to approve the proposed rules as amended; and the motion was adopted on a unanimous voice vote.

As to next steps, Regent Spector said that the proposed rules would be redrafted in accordance with the decisions made at this meeting; and a status report would be made to the Board of Regents at the November meeting. Later in the month, there would be a meeting with faculty, academic staff and student representatives to discuss the proposed rules further; which he hoped that this would help to achieve agreement on them. The rules would be returned to the board in December.

Professor Schauer suggested an additional meeting before the one involving faculty, academic staff, and student representatives to go over the draft rules as re-written.

Regent President Walsh said that the revised draft rules would be circulated as soon as possible to all who want to see them for written comments.

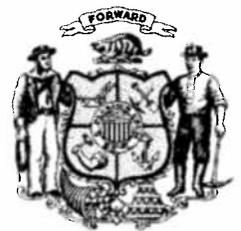
Professor Mathieu asked if the document would be returned again to the faculty senates, and Professor Schauer added that the faculty representatives are not a decision-making body. Professor Mathieu suggested that the chairs of the governing bodies could attend and take the draft rules back to their campus senates.

Regent President Walsh said that, while some might never agree with all provisions, the intention would be to get as much input as possible.

The discussion concluded and the meeting was adjourned at 2:40 p.m., upon motion by Regent Rosenzweig, seconded by Chancellor Markee.



# WISCONSIN STATE LEGISLATURE



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

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

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

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

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

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

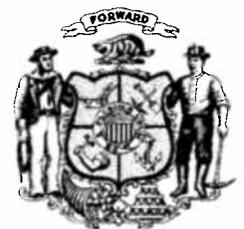
(3) *Suspension without pay.* The new language would also clearly provide for suspension without pay during the pendency of the internal process where: (a) A faculty member has been charged with serious criminal misconduct, and the provost has determined that there is a substantial likelihood that the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

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

cc: Regents  
President Reilly  
Chancellors  
Cabinet  
Committee Members



# WISCONSIN STATE LEGISLATURE





Secretary of the Faculty  
& Academic Staff

501 Extension Building  
432 North Lake Street  
Madison, WI 53706  
608-262-4387  
608-262-8404 (fax)  
711 for Wisconsin Relay  
[www.uwex.edu/secretary/](http://www.uwex.edu/secretary/)

November 16, 2006

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

Dear Regent Spector:

The Faculty Senate and Academic Staff Council of the University of Wisconsin–Extension thank you and the members of the Committee Regarding Faculty/Academic Staff Disciplinary Process for the opportunity to discuss proposed revisions to the faculty and academic staff disciplinary process rules (UWS 7 and UWS 11) on November 16. We have attached an annotated draft of UWS 7 with wording changes and specific comments about the current version of these process rules. We have the same concerns with UWS 11. Our governance groups are unanimous in belief that UWS 7 and UWS 11 are still not sound policy, as outlined in previous comments submitted and not subsequently addressed by your committee.

In general, our proposed modifications are aimed at preserving the existing appeal rights that include appeal bodies for academic staff and faculty, thereby preserving due process. We also seek to clarify the intent and meaning of terminology. For example, words such as *immediately*, *working days*, and *board* are subject to more than one interpretation, and we seek to reduce the confusion through our questions and proposed changes.

Even with these modifications, our governance groups have serious doubts that the expedited processes envisioned in your latest draft of UWS 7 can preserve appellants' rights and be implemented within the timelines set forth. The University of Wisconsin–Extension is a statewide organization, and staff members are located on all campuses of the University of Wisconsin System. We believe that the minimal timelines proposed will not be logistically possible in this context. However, we concerned ourselves primarily with the impact of those timelines on faculty and academic staff, and not on administrators.

Sincerely,

Thomas Hooyer *td*  
University Committee Member  
University of Wisconsin–Extension

Michael Maguire *md*  
Academic Staff Council Member  
University of Wisconsin–Extension

cc: Chancellor David Wilson  
Provost Marv Van Kekerix  
UW-Extension Faculty Senate  
UW-Extension Academic Staff Council

PROPOSED ORDER OF THE BOARD OF REGENTS OF  
THE UNIVERSITY OF WISCONSIN SYSTEM AMENDING AND CREATING  
RULES

[INTRODUCTORY CLAUSE]

The Board of Regents of the University of Wisconsin System proposes an order to amend UWS 2.02, UWS 4.09, UWS 11.01(1), and UWS 11.08; to create ch. UWS 7, relating to procedures for dismissal of faculty in special cases; and to create UWS 11.01(3), UWS 11.101, UWS 11.102, UWS 11.103, UWS 11.104, UWS 11.105 and UWS 11.106, relating to procedures for dismissal of academic staff in special cases.

[RULE SUMMARY]

1. Statutes interpreted: Sections 36.09(1), 36.11(1) and 36.13(3), Stats.
2. Statutory authority: Sections 36.09(1)(a) and (L), 36.11(1)(a), 36.13(3), and 36.13(5), Stats.
3. Explanation of agency authority: Sections 36.09(1), 36.11(1) and 36.13(3), and ch. 227, Stats., define the scope of the Board's authority to promulgate rules for the dismissal of faculty and academic staff members.
4. Related statute or rule: Current Wis. Admin. Code chs. UWS 4 and UWS 11.
5. Plain language analysis: The purpose of the proposed rules is to ensure that the Board rules regarding dismissal of faculty and academic staff deal specifically with circumstances in which faculty and academic staff members have engaged in serious criminal misconduct, a category of just cause under the rule. The proposed rules would define serious criminal misconduct, provide protection for constitutionally protected conduct, expression, or beliefs, authorize suspensions without pay, and provide for expedited dismissal procedures for faculty and academic staff who engage in serious criminal misconduct, while assuring adequate due process.
6. Summary of, and comparison with, existing or proposed federal regulations: There is no existing or proposed federal regulation for summary and comparison.
7. Comparison with rules in adjacent states. There are no corresponding rules in adjacent states for comparison.
8. Summary of factual data and analytical methodologies: There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and supporting documents used to determine effect on small business: The proposed rules affect only faculty and academic staff of the University of Wisconsin System. They have no effect on small business.
10. Effect on small business: The proposed rules will have no effect on small business.
11. Fiscal estimate: The proposed rules will have no fiscal effect.
12. Agency contact person: Christopher L. Ashley, Senior System Legal Counsel, University of Wisconsin System Administration, 1808 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706. Telephone: (608) 262-3662. Email: [cashley@uwsa.edu](mailto:cashley@uwsa.edu).
13. Place where comments are to be submitted and deadline for submission: Comments may be submitted to: Christopher L. Ashley, Senior System Legal Counsel, University of Wisconsin System Administration, 1808 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706. Email to [cashley@uwsa.edu](mailto:cashley@uwsa.edu). The deadline for written comments to the Board is 4:30 p.m. on September 29, 2006.

[TEXT OF RULE

SECTION 1. UWS 2.02 is amended to read:

**UWS 2.02 Delegation.** Rules and procedures developed pursuant to chs. UWS 3, 4, 5, 6, 7, and 8 by the faculty of each institution shall be forwarded by the chancellor to the president and by the president to the board for its approval prior to their taking effect. Such policies and procedures, unless disapproved or altered by the regents, shall be in force and effect as rules of the regents.

SECTION 2. UWS 4.09 is amended to read:

**UWS 4.09 Suspension from duties.** Pending the final decision as to his/her dismissal, the faculty member shall not normally be relieved of duties; but if, after consultation with appropriate faculty committees, the chancellor finds that substantial harm to the institution may result if the faculty member is continued in his/her position, the faculty member may be relieved immediately of his/her duties, but his/her pay shall continue until the board makes its decision as to dismissal, unless the chancellor also makes the determinations set forth in s. UWS 7.06(1) in which case the suspension from duties may be without pay and the procedures set forth in s. UWS 7.06 shall apply.

SECTION 3. Chapter UWS 7 is created to read:

**Dismissal of Faculty in Special Cases**

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

**UWS 7.02 Serious criminal misconduct.** (1) In this chapter, "serious criminal misconduct" means:

~~(a)~~ Pleading guilty or no contest to, or being convicted of a felony, in state or federal court, and where one or more of the conditions in ~~(b)~~(a), ~~(c)~~(b), ~~(d)~~(c) or ~~(e)~~(d) of this section are present, and the felony involves any of the following:

1. Causing serious physical injury to another person.
2. Creating a serious danger to the personal safety of another person.
3. Sexual assault.
4. Theft, fraud or embezzlement.
5. Criminal damage to property.
6. Stalking or harassment.

~~(b)~~ A substantial risk to the safety of members of the university community or others is posed.

~~(c)~~ The university's ability, or the ability of the faculty member's colleagues, to fulfill teaching, research or public service missions is seriously impaired.

~~(d)~~ The faculty member's fitness or ability to fulfill the duties of his or her position is seriously impaired.

~~(e)~~ The opportunity of students to learn, do research, or engage in public service is seriously impaired.

(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 serious criminal misconduct, as described above, shall be subject to the procedures set forth in ss. UWS 7.03 to 7.06.

(4) Any act required or permitted by ss. UWS 7.03 to 7.06 to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies approved by the Board of Regents under s. UWS 2.02.

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

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

**UWS 7.04 Reporting responsibility.** Any faculty member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS 7.02(1)(a), in state or federal court, shall immediately report that fact to the chancellor. **Questions:** Does the self-reporting requirement by a faculty member to the chancellor result in self-incrimination? In addition, what is the penalty if a faculty member fails or chooses not to report being "charged with, pleading guilty or no contest to, or being convicted of a felony, in state or federal court?" Would this then constitute separate grounds for dismissal under UWS-4? Also, what does "immediately" mean?

**UWS 7.05 Expedited process.** (1) Whenever the chancellor 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 has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS 7.02(1)(a), in state or federal court, the chancellor 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 and to advise the chancellor as to whether to proceed under this section or ch. UWS 4.

**Questions:** What constitutes a "working day"? What if a faculty member is on a 9-month appointment or sabbatical when the serious criminal misconduct occurs? Overall it seems that the tightened timeline creates a problem with due process

Also, under part (a), who are the "appropriate institutional governance representatives?" Is this the head of the University Committee? a member of the Faculty Senate? or simply someone who is deemed appropriate by the chancellor.

(b) Upon appointing an investigator and notifying the faculty member, afford the faculty member three working days in which to request that the investigator be disqualified on grounds of lack of impartiality or other cause. In the event that the ~~chancellor~~ faculty hearing body determines that a request for disqualification should be granted, the chancellor shall, within two working days of the determination, appoint a different investigator. The faculty member shall have the opportunity to request that alternative the second and subsequent investigators be disqualified on grounds of lack of impartiality or other cause.

(2) The investigator shall complete and file a report with the chancellor not later than ten working days following the investigator's appointment. Same question as above as to what constitutes a "working day"?

(3) Within three working days of receipt of the investigator's report, the chancellor 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. The charges shall be served on the faculty member in the manner specified in s. UWS 4.02(3). Same questions as above as to what constitutes "working days" and "appropriate governance representatives".

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

(b) If the chancellor decides to seek dismissal of the faculty member pursuant to ch. UWS 4, the chancellor shall file charges and proceed in accordance with the provisions of that chapter and implementing institutional policies. If, during the course of such proceedings under ch. UWS 4, the chancellor receives a report under s. UWS 7.04 or other credible information that the faculty member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. UWS 7.02(1)(a), and one or more of the conditions listed in s. UWS 7.02(1)(ba) through (ed) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this chapter.

(c) If the chancellor 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 subsection (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 to 4.06, except that the hearing shall be concluded, and written findings and a recommendation to the chancellor shall be prepared, within 15 working days of the filing of charges. Comment: procedural guarantees cannot truly be provided within a 15-day timeline.

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

(b) If the recommendation is for dismissal, the chancellor shall transmit it to the ~~board~~ Board of Regents for review.

(c) Disciplinary action other than dismissal may be taken by the chancellor, whose decision shall be final, unless the ~~board~~ Board 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 ~~board~~ Board of Regents shall review the record before the institutional hearing committee, and shall offer an opportunity for filing exceptions to the recommendation, and for oral argument. The full ~~board~~ 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 subsection (3)(a) does not proceed with the hearing before the institutional hearing committee as provided in s. UWS 7.05(4), 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 proving just cause in this chapter shall be clear and convincing evidence.

(9) The chair of the faculty hearing body, ~~subject to the approval of~~ in consultation with the chancellor, may extend the time limits set forth in this section 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.

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

~~(a) The faculty member has been charged with a felony of a type listed in s. UWS 7.02(1)(a) and the chancellor, after following the provisions of ss. UWS 7.05(1) through (3), finds, in addition, that there is a substantial likelihood that one or more of the conditions listed in s. UWS 7.02(1)(b) through (e) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or~~

*Comment: The expedited process within the stated time schedule is insufficient because a faculty member's suspension without pay is primarily dependent upon the opinion of the chancellor. Such an opinion made within a relatively short time frame could potentially be based on a lack of data leading to a decision that would adversely affect the living of a*

faculty member. The way this provision is worded puts the onus on the individual rather than the university administration that would be required to act within a strict time frame potentially without sufficient data. The faculty senate believes that a faculty member should continue with pay and be reassigned responsibilities so as to protect all parties until the expedited process is completed.

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

(eb) The faculty member has pleaded guilty or no contest to or been convicted of a felony of a type listed in s. UWS 7.02(1)(a) and one or more of the conditions listed in s. UWS 7.02(1)(b) through (e) are present.

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

(3) If, after affording the faculty member the opportunity to be heard, the chancellor determines to suspend without pay, the chancellor shall inform the faculty member of the suspension, in writing. The chancellor's decision to suspend without pay under this section shall be ~~final, except that:~~ appealable to the faculty hearing body. Suspension without pay will not be implemented until the faculty hearing body makes a decision.

(a) If the chancellor later determines that the faculty member should not be dismissed the chancellor may discontinue the proceedings, or may recommend a lesser penalty to the board, and, except as provided in subsection (c), shall order the payment of back pay for any period of the suspension for which the faculty member was willing and able to report for work.

(b) If the ~~board-~~ Board of Regents later determines that the faculty member should not be dismissed, the ~~board-~~ Board of Regents may order a lesser penalty and shall order the payment of back pay for any period of the suspension for which the faculty member was willing and able to report for work.

(c) If the chancellor or ~~board-~~ Board of Regents later determines, under subsection (a) or (b), to recommend or impose as a lesser penalty the suspension of the faculty member without pay, then any period of suspension without pay so recommended or ordered shall be offset by the period of any suspension without pay actually served by the faculty member.

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

DRAFT--2/7/06

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

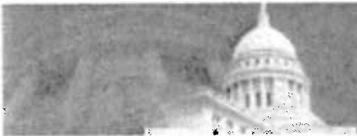
(3) If, after affording the faculty member the opportunity to be heard, the provost determines to suspend without pay, the provost shall inform the faculty member of the suspension, in writing. The provost's decision to suspend without pay under this section shall be final, except that:

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

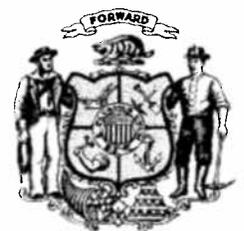
(b) If the board later determines that the faculty member should not be terminated, the board may order a lesser penalty and/or the payment of back pay.

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

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



# WISCONSIN STATE LEGISLATURE





To: Regents  
President Reilly

From: Mike Spector

On behalf of the Committee on Faculty and Academic Staff Disciplinary Process, and in preparation for the Committee's February 10 report to the Regents, I am pleased to enclose the following:

- (a) Proposed Chapter UWS 7, Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases;
- (b) Summary of Recommended Changes Regarding the Disciplinary Process for Serious Criminal Misconduct.

Please note that the Proposed UWS 7 is a "draft" and will continue to be so until completion of the University's shared governance review process period.

cc: Committee on Faculty and Academic Staff Disciplinary Process  
Cabinet  
Chancellors



**Subject:** UWW Faculty Senate on draft UWS 7

**From:** "UW-W Faculty Senate" <facsenate@uww.edu>

**Date:** Thu, 16 Mar 2006 12:48:24 -0600

**To:** <mjs@quarles.com>, <dwalsh@foleylaw.com>, <kreilly@uwsa.edu>, <vpacad@uwsa.edu>, <prosey5@yahoo.com>, <brent@johnsflaherty.com>, <markee@uwplatt.edu>, <pbrady@uwsa.edu>, <wjdickey@wisc.edu>

**CC:** <rogerax@ticon.net>, <mbradley@ruderware.com>, <Elizabeth.burmaster@dpi.state.wi.us>, <ekeesler@new.rr.com>, <jvcrain@netnet.net>, <danae@pearlsforteengirls.com>, <gracz@local215.com>, <cpruitt@abdata.com>, <jesussalas25@yahoo.com>, <cmsemenas@hotmail.com>, <mmcpike@tds.net>, "Bob Jokisch" <bjokisch@uwsa.edu>, "Saunders, Martha" <saunderm@uww.edu>, "Telfer, Richard J" <telferr@uww.edu>, "Monfils, Barbara S" <monfilsb@uww.edu>, "Epps, M. Virginia" <eppsv@uww.edu>, "Portman, Penny" <portmanp@uww.edu>, "Laurent, Jerome K" <laurentj@uww.edu>, "Klug, Hadley G" <klugh@uww.edu>, "Powell, William E" <powellw@uww.edu>, "Bren, Barbara R" <brenb@uww.edu>, "Colwin, Tom" <colwint@uww.edu>, "Weston, Karen A" <westonk@uww.edu>, "Reichert, Rebecca L" <reicherr@uww.edu>, "Schrank, Joan T" <schrankj@uww.edu>, "Meyer, Leslie" <meyerl@uww.edu>, "Albert, Pam" <albertp@uww.edu>, <board@uwsa.edu>

## M E M O R A N D U M

**To:** Regent President David Walsh  
Regent Michael Spector, Chair, Committee on Faculty and Academic Staff Disciplinary Process  
Regent Peggy Rosenzweig, Committee on Faculty and Academic Staff Disciplinary Process  
Regent Brent Smith, Committee on Faculty and Academic Staff Disciplinary Process  
Walter Dickey, Assoc. Dean; UW Law School; Committee on Faculty and Academic Staff Disciplinary Process  
Patricia Brady; UW System General Counsel; Committee on Faculty and Academic Staff Disciplinary Process  
David Markee, Chancellor, UW Platteville; Committee on Faculty and Academic Staff Disciplinary Process  
UW System President Kevin Reilly  
UW System Senior Vice President for Academic Affairs Cora Marrett

**From:** Edward Erdmann, Chair  
2005/2006 Faculty Senate  
James R. Connor University Center 63A

**Subject:** UW Whitewater Faculty Senate on draft UWS 7

**Date:** March 16, 2006

**CC:** Regent Roger Axtell  
Regent Mark Bradley  
Regent Elizabeth Burmaster  
Regent Eileen Connolly-Keesler

Regent Judith V. Crain  
Regent Danae Davis  
Regent Gregory L. Gracz  
Regent Charles Pruitt  
Regent Jesus Salas  
Regent Christopher Semenas  
Regent Milton McPike  
Martha Saunders, Chancellor  
Richard Telfer, Vice Chancellor for Academic Affairs  
Barbara Monfils, Associate Vice Chancellor for Academic Affairs  
Virginia Epps, Chair, Faculty Personnel Rules Committee  
Penelope Portman, Faculty Personnel Rules Committee  
Jerome Laurent, Faculty Personnel Rules Committee  
Hadley Klug, Faculty Personnel Rules Committee  
Willian Powell, Faculty Personnel Rules Committee  
Barbara Bren, Faculty Personnel Rules Committee  
Tom Colwin, Faculty Personnel Rules Committee  
Karen Weston, University Archives  
Rebecca Reichert, Assistant to the Chancellor  
Joan Schrank, Program Assistant to the Vice Chancellor for Academic Affairs  
Leslie Meyer, Associate Administrative Specialist, Associate Vice Chancellor for  
Academic Affairs  
Pam Albert, Secretary, Governance Center

In response to the Board of Regents' Feb. 20 request for "detailed responses [from faculty] that include, among other things, statements of specific areas of concern and, if applicable, proposed new or revised wording to address those concerns," the UW-Whitewater Faculty Personnel Rules Committee considered and noted concerns and developed recommended revisions to the draft UWS 7.

On March 14, 2006 (item 4.3 .at <<http://www.uww.edu/facsenate/M031406.html>>), the UW-Whitewater Faculty Senate approved the resolution of concerns and recommended revisions of the proposed UWS 7.

I have attached to this posting the UW-Whitewater Faculty Senate's resolution of concerns and recommended revisions of the proposed UWS 7 (<UWS7 UWW Faculty Senate.rtf>) and a copy of this memo (<MemoReUWS7.rtf>)

<b>MemoReUWS7.rtf</b>	<b>Content-Description:</b> MemoReUWS7.rtf
	<b>Content-Type:</b> application/rtf
	<b>Content-Encoding:</b> base64

<b>UWS7 UWW Faculty Senate.rtf</b>	<b>Content-Description:</b> UWS7 UWW Faculty Senate.rtf
	<b>Content-Type:</b> application/rtf
	<b>Content-Encoding:</b> base64

# Memorandum

**To:** Regent President David Walsh  
Regent Michael Spector, Chair, Committee on Faculty and Academic Staff Disciplinary Process  
Regent Peggy Rosenzweig, Committee on Faculty and Academic Staff Disciplinary Process  
Regent Brent Smith, Committee on Faculty and Academic Staff Disciplinary Process  
Walter Dickey, Assoc. Dean; UW Law School; Committee on Faculty and Academic Staff Disciplinary Process  
Patricia Brady; UW System General Counsel; Committee on Faculty and Academic Staff Disciplinary Process  
David Markee, Chancellor, UW Platteville; Committee on Faculty and Academic Staff Disciplinary Process  
UW System President Kevin Reilly  
UW System Senior Vice President for Academic Affairs Cora Marrett

**From:** Edward Erdmann, Chair  
2005/2006 Faculty Senate  
James R. Connor University Center 63A

**Subject:** UW Whitewater Faculty Senate on draft UWS 7

**Date:** March 16, 2006

**CC:** Regent Roger Axtell  
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Regent Milton McPike  
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Richard Telfer, Vice Chancellor for Academic Affairs  
Barbara Monfils, Associate Vice Chancellor for Academic Affairs

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Pam Albert, Secretary, Governance Center

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In response to the Board of Regents' Feb. 20 request for "detailed responses [from faculty] that include, among other things, statements of specific areas of concern and, if applicable, proposed new or revised wording to address those concerns," the UW-Whitewater Faculty Personnel Rules Committee considered and noted concerns and developed recommended revisions to the draft UWS 7.

On March 14, 2006 (item 4.3 .at <<http://www.uww.edu/facsenate/M031406.html>>), the UW-Whitewater Faculty Senate approved the resolution of concerns and recommended revisions of the proposed UWS 7.

I have attached to this posting the UW-Whitewater Faculty Senate's resolution of concerns and recommended revisions of the proposed UWS 7 (<UWS7 UWW Faculty Senate.rtf>).

After considering the Feb. 7, 2006 draft of UWS 7, the University of Wisconsin-Whitewater 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-Whitewater 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.
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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

1 Revision of Proposed Chapter UWS 7, Wisconsin Administrative Code

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

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

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

- 18 (a) Clearly poses a substantial risk to the safety of members of the university community or  
19 others; or  
20 (b) Seriously impairs ~~the public trust in the university and the university's ability to fulfill its~~  
21 teaching, research, or public service missions; or  
22 (c) Seriously impairs ~~the~~ 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 only  
34 by the board and only for just cause and only after due notice and hearing. Any faculty member  
35 having a probationary appointment may be dismissed prior to the end of his or her term of  
36 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 engages~~  
41 ~~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 faculty  
48 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, d*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) (c) are present, and that there is~~  
102 ~~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 opportunity  
112 to be heard *by the provost and the appropriate faculty governance representatives* with regard to  
113 the matter. The faculty member may be represented by counsel or another at this meeting.

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

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

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

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

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



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[REDACTED]

March 8, 2006

Dear Regent Spector,

The Faculty Senate of the University of Wisconsin-Extension would like to thank you for all your work on the Committee Regarding Faculty/Academic Staff Disciplinary Process. Your leadership and your openness to discussing issues and attempting to develop the "best processes" for dealing with serious concerns are appreciated.

At their meeting on March 7, 2006, the Faculty Senate unanimously passed a motion to forward to you and members of the committee and the System Administration the attached position paper and resolution.

If you have any questions, please feel free to contact me or members of the University of Wisconsin-Extension Faculty Senate.

Sincerely,



Holly Breitkreutz  
Chair  
Faculty Senate  
University of Wisconsin-Extension

Xc: Regent Peggy Rosenzweig, Regent Brent Smith, General Counsel Pat Brady, Professor Walter Dickey, Chancellor David Markee, Regent President David Walsh, President Kevin Reilly, Vice President Cora Marrett, Interim Chancellor Van Kekerix, Interim Provost Ellen Fitzsimmons, members of the University of Wisconsin-Extension Faculty Senate

HB:ras

**University of Wisconsin-Extension**  
**Faculty Senate Position Paper**  
Concerning  
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-Extension entertains 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.

**Item 1:** The Senate agrees with the concern stated in the proposed UWS 7.01 and shares with the Board of Regents concerns for maintaining a work environment free from serious and substantial physical and psychological safety risks. However, we disagree with the means proposed to address these concerns.

**Item 2:** The Senate believes that with the addition of specific and appropriate timelines along with the provisions of UWEX 4.08 [***Suspension from duties. Pending the final decision as to his/her dismissal, the faculty member shall not be relieved of duties, except as follows: if, after consultation with the appropriate departmental executive committee or its functional equivalent, the Chancellor finds that substantial harm to the institution may result if the faculty member is continued in his/her position, the faculty member may be relieved immediately of his/her duties, or reassigned to other professional duties. His/her salary shall continue until the Board makes its decision as to dismissal.***] and UWS 4.09 for a transfer of duties with pay, the current statements contained in UWS 4 and UWEX 4 are sufficient to meet concerns described in the proposed UWS 7.

**Item 3:** The Senate believes that the measures proposed in UWS 7 to make the work environment safe for all are not effective, and may in fact, be counterproductive.

- We believe that less drastic and fairer remedies exist that can be used to address the concerns of the Board of Regents, the Legislature, and the public.
- We believe the measures as proposed undermine due process and 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.
- We propose a simple remedy: Those who are accused of serious criminal misconduct shall be reassigned duties so as to protect all parties and shall draw full salary until such time as they are convicted or exonerated in a court of law (see UWS 4.09 and UWEX 4.08).
- Persons may be suspended without pay at the point when they are convicted of felonies associated with "serious criminal misconduct" that are directly related to their work for UW-Extension.

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**Item 4:** The Faculty Senate believes that shared governance has been disenfranchised during the process of developing the Proposed Chapter.

**Item 5:** The Faculty Senate believes 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 misconduct is defined as "engaging in behavior that constitutes commission of a felony". This is 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 believe 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.
- 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.
- There is no provision for representation or to be made whole in the event that charges are dropped, never filed, or a finding of innocence is reached.

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

*Offered for consideration by the University of Wisconsin-Extension Faculty Senate*

Whereas, the Proposed Chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases contains several provisions that conceivably 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-Extension hereby recommends that UWS 4 and UWEX 4 be amended to add specific and appropriate timelines along with the existing provisions for transfer of duties with pay as the means to provide for a safe work environment when faced with complaints of "serious criminal misconduct".