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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)

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

Passed by the



On March 15, 2006

Whereas, the Faculty Senate of the University of Wisconsin - Green Bay agrees with the broad sentiment expressed in UWS 7; however

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, what constitutes credible information when deciding whether to proceed in a case against a faculty member, and who bears the burden of proof; and

Whereas, a faculty member could conceivably be terminated upon mere suspicion of having committed a crime; and

Whereas, as currently worded in UWS 7.06(1), a faculty member could conceivably be suspended without pay upon mere suspicion of having committed a crime; 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 - Green Bay hereby declares its rejection of the proposed procedures as currently drafted. We urge the Board of Regents to make revisions to UWS 7 to address faculty concerns as outlined in the attached "University of Wisconsin - Green Bay Faculty Senate Position Paper" dated March 8, 2006, before further action to approve UWS 7 is made.

# University of Wisconsin - Green Bay Faculty Senate Position Paper

Concerning  
Summary of Recommended Changes  
Regarding the Disciplinary Process for Serious Criminal Misconduct  
and  
Proposed Chapter UWS 7, Wisconsin Administrative Code  
Procedures for Dismissal of Faculty in Special Cases

## Executive summary of the Senate's position

The Faculty Senate of the University of Wisconsin - Green Bay entertains serious doubts about the current draft of the documents titled Summary of Recommended Changes Regarding the Disciplinary Process for Serious Criminal Misconduct and Proposed Chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases. During a lengthy discussion of the documents, several areas of concern were identified and are summarized in this paper. Although both documents as currently written are rejected by the Senate, however general points of agreement are noted.

### Item 1: The Senate agrees with the broad sentiment expressed in the Proposed Chapter.

- We agree with the statement in UWS 7.01: "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."

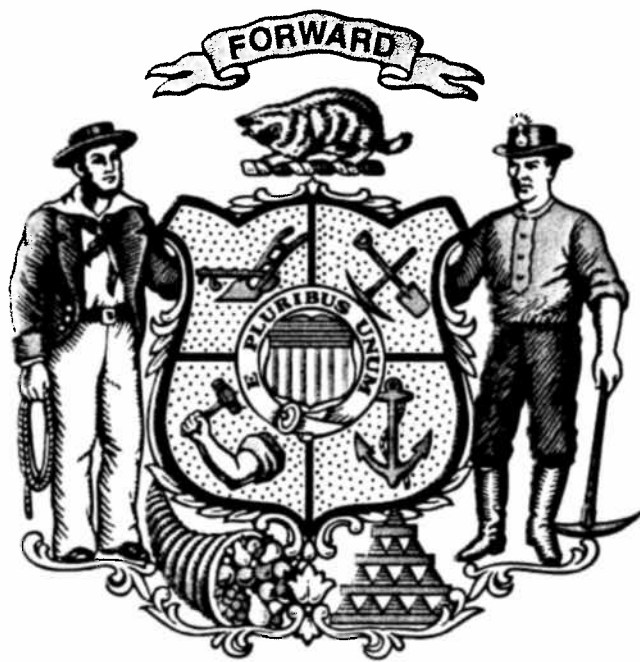
### Item 2: Despite a statement to the contrary in the Summary, the documents demonstrate disregard for due process and contain ambiguities that could be used to circumvent due process.

- UWS 7.02(1) states that serious criminal conduct is defined as "engaging in behavior that constitutes commission of a felony." 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 terminology is excessively vague and could allow a faculty member to be subject to UWS 7.05 with merely an allegation made against him/her. It is not clear how this proposed wording protects the faculty member's right under Wis. Stats. 111.322(1).
- UWS 7.02(1)(b) does not establish how one will judge if the faculty member's conduct "seriously impairs the public trust in the university...."
- UWS 7.02(1)(c)(2) does not establish how one will judge if the faculty member's conduct "seriously impairs the efficiency of the colleagues and students with whom he or she works."
- It is not clear how the wording of UWS 7.04 protects the faculty member's right against self-incrimination.
- 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)].
- Felony is a broad legal classification. Under the language of the proposal, a tenured faculty member conceivably could be dismissed for tax evasion.
- 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.
- Provosts are interested parties in the proceedings. Due process demands that disinterested parties hear evidence and hand down judgments.
- Even if legal charges were to be filed, the proposed timeline would require provosts to hand down judgments while law enforcement officials were still conducting an investigation. Police, prosecutors and defense attorneys alike are highly unlikely to share their evidence prior to trial. Any evidence, therefore, would come solely from a single investigator with no specified qualifications.
- No standard of evidence is specified. The Proposed Chapter [UWS 7.05(8)] simply states: "The burden of proof shall be a preponderance of the evidence." There is no specification as to the credibility of the source of the evidence.
- Furthermore, "preponderance" is the lesser standard used in civil litigation. The criminal standard of evidence is defined as "beyond a reasonable doubt" and requires a unanimous vote by a jury. A felony — the conduct under discussion — is a criminal act.
- The wording of UWS 7.06(1)(a) is not clear that the faculty member has been charged with a felony by a district attorney. As currently written, the word "charged" could refer to a charge made by university personnel or others than a district attorney.
- UWS 7.06(1)(a) states: A faculty member can be suspended without pay if "there is a substantial likelihood that the faculty member has engaged in the conduct as alleged..." which is a weak, ill-defined standard of proof.

**Item 3: Shared governance has been unfairly disenfranchised during the process of developing the Proposed Chapter.**

- The Proposed Chapter was developed by a committee with a bare representation of faculty in its membership.
- The Summary statement contains an egregious factual error. The Proposed Chapter is not "subject to shared governance review." Under Wisconsin Statutes, changes to Chapter 36 must be approved by shared governance.
- The top-down process of drafting the Proposed Chapter, therefore, is fundamentally flawed, since it has failed to take into account the perspective of the primary stakeholders – the faculty of the University of Wisconsin System. (However, the faculty thanks Regent Spector for meeting with the Faculty Representatives March 3, 2006 and listening to the concerns regarding the February draft of UWS7.)
- In addition, we note the glaring absence of academic staff and administration from the Proposed Chapter.



UNIVERSITY *of* WISCONSIN  
**LA CROSSE**

March 27, 2006

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

From: Carmen R. Wilson, Chair



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

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

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

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

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

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

## **Background**

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

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

## **Recommendations**

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

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

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

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

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

#### **UWS 4: Procedures for Dismissal**

UWS 4 details the procedures under which the Board of Regents may dismiss tenured (or tenure-track) faculty for just cause. The policy does not expand on what constitutes just cause beyond the accepted legal meaning but does state that faculty members are “entitled to enjoy and exercise all of the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community.”

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

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

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



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

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

### **Proposed UWS 7**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Other Issues With UWS 7**

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

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

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

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

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

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

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

The process timeline continues with

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

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

The process concludes with

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

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

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

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





April 14, 2006

MEMORANDUM

TO: Senior Vice President Cora Marrett, UW System Administration  
Chancellor John Wiley, UW-Madison

FROM: Frank Kooistra, Chair  
UW-Madison Academic Staff Executive Committee

SUBJECT: Evaluation of Proposed draft of a new UWS Chapter 7

In a memorandum dated February 20, Regent Mike Spector, as chair of the Special Committee on Faculty and Academic Staff Disciplinary Process, requested our written comments on a proposed draft of a new UWS Chapter 7, Wisconsin Administrative Code. The UW-Madison Academic Staff Executive Committee (ASEC) has adopted a position on this matter, which is set forth below.

We decline comment on UWS 7 because it refers to members of the faculty, but never refers to members of the academic staff. However, in response to the issues UWS 7 is attempting to address, we recommend the following modification (expansion) of UWS 11.08:

**UWS 11.08 Suspension from duties.** Pending the final decision as to dismissal, the academic staff member with an indefinite appointment shall not be relieved of duties, except where, after consultation with the appropriate administrative officer, the chancellor finds that substantial harm may result if the staff member is continued in his or her position. Where such determination is made, the staff member may be relieved of his or her position immediately, or be assigned to another administrative unit. *Until the chancellor makes a decision as to dismissal, the staff member's salary shall continue, except where the staff member has been charged with a felony and the chancellor has determined those charges substantially relate to the circumstances of the particular position. If the chancellor later determines the staff member will not be dismissed, the chancellor shall order the payment of back pay for the period of suspension from duties without salary.*

Our reasons for proposing this revision of UWS 11.08 are the following:

1. If a felony charge is substantially related to the particular position, it is reasonable that the university would take steps to prevent resources being diverted from the mission of the university in the form of ongoing compensation to a staff member who, in all likelihood, will make no further contribution to the mission of the university in his or her current appointment. The proposed change to UWS 11.08 provides a basis for the chancellor to act on this question in a timely manner. It also reflects the gravity of a felony charge.
2. Due process as to the larger question of dismissal can then proceed under existing rules in UWS 11. An alternate, expedited due process is neither necessary nor helpful.
3. For staff members with indefinite appointments, back pay should be mandated in the event dismissal (and suspension without salary) is subsequently determined to be unwarranted.
4. Wis. Stats. 111.322(f) prohibits employment discrimination on account of arrest and conviction records not substantially related to the circumstances of the particular job.

We appreciate the opportunity to comment on this important topic.

Academic Staff Assembly  
Academic Staff Executive Committee

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MEMORANDUM

DATE: April 6, 2006

TO: Carlos Santiago, Chancellor, University of Wisconsin-Milwaukee  
Cora B. Marrett, Senior Vice President, Academic Affairs, UW-System

FROM: 

RE: Academic Staff Response to proposed Wisconsin Administrative Code (UWS 7),  
Procedures for Dismissal of Faculty in Special Cases

The Academic Staff Senate of UW-Milwaukee is distraught that the actions of less than one-tenth of one percent of UW-System employees have prompted the proposed Wisconsin Administrative Code (UWS 7). Over 42,000 UW-System employees perform their professional duties properly, providing countless educational, research and community benefits to the citizens of Wisconsin. We disagree with the proposed code in principle and have concerns about the legality of some of its provisions. In addition, we believe that providing the special committee with recommended modifications to the draft language de facto endorses this ill-conceived measure. The members of the Academic Staff Senate cannot do that.

UW-System already has a policy and procedure for dismissal of tenured faculty. That is **UWS 4.01, Dismissal for cause**. "(1) Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and hearing. Any faculty member having a probationary appointment may be dismissed prior to the end of his/her term of appointment only by the board and only for just cause and only after due notice and hearing." When used appropriately, UWS 4 procedures follow similar steps to that of proposed UWS 7, including investigation, due process hearing and regent review and approval of recommendations.

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

The two elements that appear to be foremost in the minds of those who feel this additional policy is necessary are a) ensuring that the individual involved not remain in a position that somehow would endanger students or others and b) that they not continue to draw salary during a potentially drawn out legal case. The answer to these two concerns would appear to be suspension from duties with temporary suspension of salary, with the understanding that if charges are later dropped or the individual in question is found to be innocent, that person will receive back pay.

Frankly, we are extremely surprised that any UW-System group – including the Board of Regents – would create a policy and procedure for dismissal of someone who has merely been accused of or charged with a felony. This policy appears to reverse the most basic concept of law that one is innocent until proven guilty. Furthermore, it puts the university and its administrators in the position of investigating an alleged crime, something for which they are untrained, ill-equipped and which is by law the primary responsibility of local police departments. Because of this lack of training and resources, it is a possibility the university's investigation will cause the criminal case to be dismissed due to evidence tampering or influencing of potential witnesses.

Finally, we cannot support the proposed code due to the fact that it would treat UW-System employees (assuming similar codes will be created for Academic and Classified Staff) in a discriminatory manner as compared with other state employees and even state legislators. As a case in point, Scott Jensen (R-Brookfield) was charged with felony misconduct in October 2002. He was found guilty of charges in March 2006. He didn't resign his assembly seat until AFTER the conviction, and in fact, was not required to do so until after sentencing. A *Milwaukee Journal-Sentinel* article noted the following, "A May sentencing would allow Jensen to participate in April votes in the Legislature, but it means he would not be able to stand for re-election this fall." (MJS, 3/11/06) How is it appropriate that an elected official, whose job it is to serve constituents and the citizens of Wisconsin, can continue to vote on bills that will affect the citizens even after being convicted, while a tenured UW-System faculty member can be dismissed based on a 'preponderance of evidence' found by a university official?

In summary, we believe the proposed UWS 7 contains punitive elements that are not likely to hold up under legal scrutiny, much less a formal appeal in court. Amending UWS 4.09 to allow for immediate suspension without pay in the case of alleged felony offenses should be considered as a more reasonable approach to this issue than the draft of UWS 7.



UWM Faculty Senate Resolution on Proposed UWS Administrative Code Chapter 7  
(Procedures for Dismissal of Faculty in Special Cases)

Whereas, the UWS Board of Regents has requested feedback from all UWS institutions and their faculty governance bodies on the proposed UWS 7; and,

Whereas, the faculty of UW Milwaukee (hereafter, "the faculty") appreciate the need for the Board of Regents to ensure timely closure to egregious faculty misconduct that may lead to dismissal for cause; and,

Whereas, the faculty are fully committed to the rights and responsibilities accorded by Wisconsin Statutes, Chapter 36, including UWS and UW Milwaukee Policies and Procedures, wherein faculty are expected to have primary purview over faculty personnel matters; and,

Whereas, ensuring appropriate due process prior to imposing any form of discipline or sanction against the faculty is viewed as essential;

Therefore, be it resolved that the faculty views with concern the creation of UWS 7, in the context of existing laws and policies (eg UWS 4) that ensure timely closure to faculty misconduct that may lead to discipline and/or dismissal for cause; and,

Be it further resolved, that the faculty recognizes that the Board of Regents is determined to create a UWS 7 and provides suggested language changes (see attached documentation) that more consistently comport with Wisconsin Statutes, Chapter 36 and the faculty UWM Policies and Procedures resulting there from.

Unanimously affirmed by the UW Milwaukee Faculty Senate on 16 March 2006

Attachment (1)

All proposed language changes are reflected in red font throughout the UWS 7 draft provided for feedback.

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 under Wisconsin Law, and that ~~(a)~~ clearly poses a substantial risk to the safety of members of the university community or others. ~~and or~~

~~(b) Seriously impairs the public trust in the university and the university's ability to fulfill its teaching, research or public service missions; and 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 or chancellor.~~

**(7.04 should be deleted; this is a form of self-incrimination. The likelihood that faculty engaged in "Serious Criminal Misconduct" would go unnoticed by colleagues is remote and would, therefore, be brought to the attention of administration. All subsequent sections and citations to them would be re-numbered, accordingly.)**

**UWS 7.05 Expedited process.** (1) Whenever the provost or 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, or where the provost or chancellor has determined to impose a suspension without pay pending the final decision as to dismissal under s. UWS 7.06, the provost or chancellor shall:

(a) Within three working days of receipt of the report or information, inform the faculty member of its receipt and, after active 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 or chancellor determines that a request for disqualification should be granted, the provost or chancellor shall, within two working days of the determination, appoint a different investigator, after active consultation with appropriate institutional governance representatives.

(2) The investigation shall be completed and a report filed with the provost or chancellor 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 or 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.

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

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

(c) If the provost or 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 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 30 ~~45~~ 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~~ the relevant legal standard for such criminal cases.

(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 consultation with ~~the approval of~~ the provost or chancellor.

**UWS 7.06 Temporary suspension from duties.** (1) The provost or chancellor, after active 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 or chancellor finds, in addition, that ~~one or more of the~~ elements of serious criminal misconduct listed in s. UWS ~~7.01(a) (a)~~ 7.02(1) 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 or chancellor shall evaluate the available information to determine whether the conditions specified in par. (1) are present. If the provost or chancellor finds that the conditions in par. (1) are present, he or she shall actively consult with appropriate faculty governance representatives, 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.

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(3) If, after affording the faculty member the opportunity to be heard, the provost or chancellor determines to suspend without pay, the provost or chancellor 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, may file a complaint per campus policies pursuant to UWS 6, ~~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 or chancellor 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.



UW Oshkosh

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

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

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

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

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

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

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

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

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

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

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

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

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

**Proposed Changes to the 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 being convicted of a felony which, and that:~~

(a) Clearly poses a substantial risk to the safety of members of the university community or others; or

~~(b) Seriously impairs the public trust in the university and the university's ability to fulfill its teaching, research or public service missions; or~~

~~(be) 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~~ 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.

**Comment [stf1]:** Because the administrative officers and standing faculty committees of the University of Wisconsin are not competent by training or experience to investigate or adjudicate criminal charges, disciplinary action based on criminal activity must follow, rather than anticipate, legal proceedings.

**Comment [stf2]:** A vague and inexact standard, out of harmony with Wis. Stats. 111.321-322, 111.335.

**Comment [stf3]:** This standard addresses the core issue, and is fully consistent with Wis. Stats. 111.321-322, 111.335.

**Comment [stf4]:** Another vague standard, which furthermore depends not on the truth of the underlying allegation, but on the earnestness of those making the complaint (i.e. the complainant's efficiency may be lowered by someone's presence quite independent of whether or not that person's behavior is substantially related to their particular duties).

**Comment [stf5]:** Since UWS 4 does expressly provide otherwise, the presence of this phrase would make the entire chapter inapplicable to anyone.

(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 Chancellor/Provost.

**Comment [stf6]:** As originally written, this section would require self-incrimination; however, with the changes to 7.02(1) above, this section merely requires the reporting of objectively determinable acts of the judicial system, and is thus unobjectionable.

**UWS 7.05 Expedited process.** (1) Whenever the chancellor/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 chancellor/provost has determined to impose a suspension without pay pending the final decision as to dismissal under s. UWS 7.06, the chancellor/provost shall:

**Comment [stf7]:** The rest of UWS (especially chaps. 4 and 6) provides for discipline to be the province of the chancellor, and it is anomalous that this chapter should give such powers to the provost. The chancellor has broad powers of delegation and consultation, but, to be consistent with the rest of UWS, the final decision and responsibility should remain with the chancellor. This change is made throughout the text where appropriate.

(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 chancellor/provost determines that a request for disqualification should be granted, the chancellor/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 chancellor/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 chancellor/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.

**Comment [stf8]:** This subsection highlights the contradiction between the rest of UWS and this draft concerning the roles of the chancellor and provost: the original text here says the provost may seek dismissal under UWS 4, while UWS 4.02 explicitly states that the chancellor is responsible for seeking dismissal.

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

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

(c) If the chancellor/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 on the administration or its representatives.~~

**Comment [stf9]:** This is the standard used for dismissal cases in UWS 4.06(1)(a).

(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.~~

**Comment [stf10]:** UWS 4, in general, vests powers in the faculty hearing committee (e.g. 4.04, 4.06(1)(d)), not the chair. The provost (or chancellor) is a party to the proceedings, and basic considerations of fairness dictate that such decisions cannot be left to one of the interested parties.

**UWS 7.06 Temporary suspension from duties.** (1) The chancellor/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) - (e) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or~~

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

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

(2) Before imposing a suspension without pay, the chancellor/provost shall evaluate the available information to determine whether the conditions specified in par. (1) are present. If the chancellor/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 chancellor/provost determines to suspend without pay, the chancellor/provost shall inform the faculty member of the suspension, in writing. The chancellor's/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 chancellor/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.

**Comment [stf11]:** Suspension without pay is a serious penalty, and should only be incurred after proper due process. The due process provisions of this section are minimal (unlike the appropriate due process provisions of UWS 4 and UWS 7.05). Consequently, this section and its penalty should only be invoked when alternative due process proceedings have occurred. Conditions (b) and (c), fulfill this, since they are predicated upon objectively determinable actions of the judicial system. Condition (a), however, is predicated upon charging alone (thus violating the presumption of innocence prior to sufficient due process), and furthermore requires the provost (or chancellor) to decide that the accused is most likely guilty. University officials are unsuited by training or experience for making such decisions. A faculty member who has been charged with a serious crime, but does not fall under either conditions (b) or (c), is subject to dismissal under UWS 4, and may be suspended by the chancellor under UWS 4.09, which also has minimal due process. However, because UWS 4.09 provides for suspension with pay, the due process concerns raised by UWS 7.06 do not apply.

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





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

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

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

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

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

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

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

~~Be it resolved, that the Faculty Senate of the University of Wisconsin-Parkside~~

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

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

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

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

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

**Proposed Changes to the 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~~ being convicted of a felony which ~~and that~~:

(a) Clearly poses a substantial risk to the safety of members of the university community or others; or

~~(b) Seriously impairs the public trust in the university and the university's ability to fulfill its teaching, research or public service missions; or~~

~~(be) 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~~ 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.

**Comment [stf1]:** Because the administrative officers and standing faculty committees of the University of Wisconsin are not competent by training or experience to investigate or adjudicate criminal charges, disciplinary action based on criminal activity must follow, rather than anticipate, legal proceedings.

**Comment [stf2]:** A vague and inexact standard, out of harmony with Wis. Stats. 111.321-322, 111.335.

**Comment [stf3]:** This standard addresses the core issue, and is fully consistent with Wis. Stats. 111.321-322, 111.335.

**Comment [stf4]:** Another vague standard, which furthermore depends not on the truth of the underlying allegation, but on the earnestness of those making the complaint (i.e. the complainant's efficiency may be lowered by someone's presence quite independent of whether or not that person's behavior is substantially related to their particular duties).

**Comment [stf5]:** Since UWS 4 does expressly provide otherwise, the presence of this phrase would make the entire chapter inapplicable to anyone.

(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 Chancellor/Provost.

**Comment [stf6]:** As originally written, this section would require self-incrimination; however, with the changes to 7.02(1) above, this section merely requires the reporting of objectively determinable acts of the judicial system, and is thus unobjectionable.

**UWS 7.05 Expedited process.** (1) Whenever the chancellor/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 chancellor/provost has determined to impose a suspension without pay pending the final decision as to dismissal under s. UWS 7.06, the chancellor/provost shall:

**Comment [stf7]:** The rest of UWS (especially chaps. 4 and 6) provides for discipline to be the province of the chancellor, and it is anomalous that this chapter should give such powers to the provost. The chancellor has broad powers of delegation and consultation, but, to be consistent with the rest of UWS, the final decision and responsibility should remain with the chancellor. This change is made throughout the text where appropriate.

(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 chancellor/provost determines that a request for disqualification should be granted, the chancellor/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 chancellor/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 chancellor/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.

**Comment [stf8]:** This subsection highlights the contradiction between the rest of UWS and this draft concerning the roles of the chancellor and provost: the original text here says the provost may seek dismissal under UWS 4, while UWS 4.02 explicitly states that the chancellor is responsible for seeking dismissal.

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

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

(c) If the chancellor/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 on the administration or its representatives.~~

**Comment [stf9]:** This is the standard used for dismissal cases in UWS 4.06(1)(a).

(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.~~

**Comment [stf10]:** UWS 4, in general, vests powers in the faculty hearing committee (e.g. 4.04, 4.06(1)(d)), not the chair. The provost (or chancellor) is a party to the proceedings, and basic considerations of fairness dictate that such decisions cannot be left to one of the interested parties.

**UWS 7.06 Temporary suspension from duties.** (1) The chancellor/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) - (e) are present, and that there is a substantial likelihood that the faculty member has engaged in the conduct as alleged; or~~

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

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

(2) Before imposing a suspension without pay, the chancellor/provost shall evaluate the available information to determine whether the conditions specified in par. (1) are present. If the chancellor/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 chancellor/provost determines to suspend without pay, the chancellor/provost shall inform the faculty member of the suspension, in writing. The chancellor's/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 chancellor/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.

**Comment [stf11]:** Suspension without pay is a serious penalty, and should only be incurred after proper due process. The due process provisions of this section are minimal (unlike the appropriate due process provisions of UWS 4 and UWS 7.05). Consequently, this section and its penalty should only be invoked when alternative due process proceedings have occurred. Conditions (b) and (c), fulfill this, since they are predicated upon objectively determinable actions of the judicial system. Condition (a), however, is predicated upon charging alone (thus violating the presumption of innocence prior to sufficient due process), and furthermore requires the provost (or chancellor) to decide that the accused is most likely guilty. University officials are unsuited by training or experience for making such decisions. A faculty member who has been charged with a serious crime, but does not fall under either conditions (b) or (c), is subject to dismissal under UWS 4, and may be suspended by the chancellor under UWS 4.09, which also has minimal due process. However, because UWS 4.09 provides for suspension with pay, the due process concerns raised by UWS 7.06 do not apply.



UW-Platteville Academic Staff Senate

Resolution Concerning  
Proposed Chapter UWS7, Wisconsin Administrative Code  
Procedures for Dismissal of Faculty in Special Cases

Whereas, Proposed Chapter UWS7, Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases is restrictive and too binding and

Whereas, the policy lacks clarification on when the investigation and termination will occur in relation to the accusation or conviction of a crime, and

Whereas, the policy does not clearly define what charges constitute "Criminal Misconduct", and

Whereas, the policy does not address legal protection for the Provost, investigator, institutional standing committee, and governance bodies, and

Whereas, the policy does not address restitution to the employee in the event an error in termination was made or charges are withdrawn, reduced, or the employee is found innocent by a court of law.

Therefore, be it resolved that the Academic Staff Senate of the University of Wisconsin-Platteville hereby rejects the Proposed Chapter UWS7, Wisconsin Administrative Code, Procedures for Dismissal of Faculty in Special Cases.





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.

*The essential elements of "serious criminal misconduct" as described herein are open to broad interpretation and would be, for all practical*

*purposes, impossible to define. Part (a) refers to "commission of a felony." While it may be a relatively straightforward task to determine that an employee is **charged** with a felony, the fact of whether the individual has **committed** a felony is determined through due process. Charges often are amended, lessened or changed throughout the course of the proceedings making it virtually impossible to predict which (or even if a) felony conviction will occur.*

*Part (b) of the essential elements is even more open to interpretation. How will the campus decision-maker determine whether the charged employee will pose a danger to public safety, impair the public trust in the University, impair the faculty member's fitness or ability to fulfill duties? Most troubling is the last part of the statement which indicates the Provost will be expected to determine whether the conduct seriously impairs the efficiency of co-workers.*

- (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.

*While it is acknowledged that swift and efficient handling of disciplinary issues is important, it seems very unrealistic to think that a university administrator would be able to conduct his or her independent investigation of such a serious matter within such a short time frame.*

- (2) *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.

*This section imposes a penalty before the completion of due process. Perhaps a viable alternative would be to temporarily reassign the employee being investigated under this procedure duties and responsibilities that have no connection to the alleged crime.*

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

To: Ron



Wisconsin's Public Liberal Arts College

April 3, 2006

Senior Vice President Cora B. Marrett  
1620 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

Dear Senior Vice President Marrett:

The Faculty Senate of the University of Wisconsin-Superior would like to thank Regent Spector for his invitation for input and feedback regarding UWS 7. We appreciate Regent Spector's careful consideration of faculty perspectives here.

The faculty of the University of Wisconsin--Superior appreciate the need for the Board of Regents to ensure timely closure to egregious faculty misconduct that may lead to dismissal for cause.

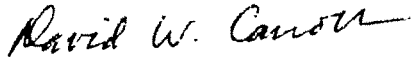
However, the faculty believe that the Proposed chapter UWS 7, Wisconsin Administrative Code Procedures for Dismissal of Faculty in Special Cases contains several provisions that conceivably could be used to circumvent due process in a court of law.

The faculty also expressed concern over a number of ambiguities that exist in the proposed procedures. In particular, the faculty expressed concern that in the current form of the proposed UWS 7, a faculty member could conceivably be terminated or suspended without pay upon mere suspicion of having committed a crime.

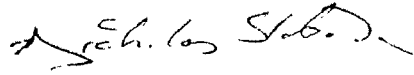
Finally, the faculty noted that such provisions could infringe upon the rights of the accused as guaranteed by the U.S. Constitution.

Accordingly, at the Faculty Senate meeting of 28 March 2006, the faculty senate passed the attached resolution. If you have any questions, please feel free to contact me or members of the University of Wisconsin-Superior Faculty Senate.

Sincerely,



David W. Carroll  
Chair, UW-Superior Faculty Senate



Nicholas Sloboda  
UW-Superior Faculty Representative

cc:

Kevin P. Reilly, UW System President  
Patricia A. Brady, General Counsel  
Ronald M. Singer, Associate Vice President for Academic Affairs  
Bob Jokisch, Special Assistant to the Senior Vice President for Academic Affairs -  
Lisa Kornetsky, Director, Office of Professional and Instructional Development  
Professor Walter Dickey, UW-Madison  
Board of Regents  
Julius Erlenbach, UW-Superior Chancellor

**FACULTY SENATE**  
**UW-Superior**

Belknap & Catlin • PO Box 2000 • Superior, WI 54880-4500

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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—Superior Faculty  
Senate

Whereas, the Faculty Senate of the University of Wisconsin—Superior hereby  
views UWS 7 as proposed as seriously flawed;

Therefore, be it resolved that the Faculty Senate of the University of Wisconsin—  
Superior rejects UWS 7 as proposed and urges the adoption of the attached  
alternative.

Adopted 28 March 2006.

## ALTERNATIVE UWS 7

UWS 7.01 Declaration of Policy. University faculty members are responsible for advancing the university's missions of teaching, research and public service. The fulfillment of these missions requires public trust in the integrity of the institution. The university's effectiveness and credibility are undermined by felonious 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 interferes with the duties of the faculty member. Situations involving such felonious conduct by faculty members must be addressed and resolved promptly to ensure that public trust is maintained and that the university is able to advance its missions. The board of regents and the several faculties therefore adopt the procedures in this chapter for identifying and responding to those instances in which a faculty member has been convicted of or charged with a felony.

7.02 Dismissal upon a guilty plea, a no contest plea, or a conviction of a felony. Conviction of a felony under state or federal law may constitute just cause for dismissal of a faculty member, subject to the limitations of Wisconsin Statutes §111.335. Dismissal proceedings upon a guilty plea, a no contest plea, or a conviction of a felony shall be governed by the process specified in UWS 4.02-4.10. A finding for dismissal must be based on clear and convincing evidence in the hearing record.

7.03 Just Cause Determination. Whether a guilty plea, a no contest plea, or a conviction of a felony constitutes just cause for dismissal shall be determined by the USW 4.03 committee in accordance with the provisions of 4.01(2). In addition, no conviction will be considered adequate cause for dismissal unless it is serious and relates substantially to the fitness of the faculty member in his or her professional capacity as a teacher, researcher, or practitioner performing clinical services. Dismissal shall not be used to restrain faculty members in their exercise of all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. The burden of proof of the existence of just cause for a dismissal is on the administration.

7.04 Self-Reporting Requirement. If a faculty member is charged with or convicted of a felony under state or federal law, he or she will report this fact to the provost, so long as such reporting does not violate the faculty member's right against self-incrimination.

7.05 Suspension Without Pay. Suspension without pay pending a final decision in dismissal proceedings is permitted in only exceptional circumstances when the provisions of UWS 4.09 are inadequate to protect the ability of the university to fulfill its mission. A faculty member can only be suspended without pay when all of the following conditions are met:

- (a) the faculty member has been charged with or convicted of a felony in state or federal court, and the conduct alleged in the charge or used in the conviction is the basis for the pending dismissal proceedings;
- (b) the UWS 4.03 committee determines that substantial harm to the institution will result if the faculty member continues in his or her position;
- (c) the UWS 4.03 committee determines, after a preliminary review of the evidence for and against dismissal, that substantial likelihood exists for a finding warranting dismissal.

7.06 Procedures for suspension without pay. Suspension without pay may occur only after affording the accused faculty member due process. Due process shall be afforded by a proceeding before the UWS 4.03 committee to determine if the conditions in 7.04 (b) and (c) apply.

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