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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 08-099

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **2. Form, Style and Placement in Administrative Code**

a. The rule preface states that there are no corresponding rules in adjacent states for comparison. While an executive branch agency may not have promulgated formal administrative rules in the other states, it is likely that public university systems in those states have policies regarding student nonacademic disciplinary proceedings and conduct on university lands. These policies should be described briefly.

b. The rule preface does not describe where and when comments regarding the rule may be made. If a date is not yet known, the rule preface should indicate that the notice of hearing regarding the rule will contain this information.

c. In s. UWS 17.02 (4), the paragraphs should be listed; each paragraph should begin with a capital letter; and each paragraph should conclude with a period.

d. In s. UWS 17.05, the last sentence should be rewritten to read: “The investigating officer shall investigate student nonacademic misconduct and initiate procedures....”

e. In s. UWS 17.09 (intro.), the phrase “any of” should be inserted before the phrase “the following.” Similarly, sub. (10) (intro.) should conclude with the phrase “any of the following.” Also, the paragraphs following this introduction should begin with a capital letter and be concluded with a period. [See s. 1.03 (2) (h), Manual. The entire rule should be reviewed for the appropriate use of introductory material.]

f. Section UWS 17.09 (11) should begin with the phrase “Making a knowingly false statement” in order to follow the structure of the remaining subsections.

g. In s. UWS 17.09 (14), the correct cross-reference is “ch. UWS 18.” It is not necessary to specifically refer to the Administrative Code and the chapter title.

h. Section UWS 17.10 uses the notation “(s).” This format should be avoided because the statutes provide that the singular includes the plural and the plural includes the singular. [See ss. 227.27 (1) and 990.001 (1), Stats.]

i. In s. UWS 17.11, the introductory material should be numbered as sub. (1) because it does not grammatically lead into the following subsections. The remaining subsections and any internal cross-references should be renumbered accordingly. [The entire rule should be reviewed for this problem.]

j. In s. UWS 17.12 (1), the first instance of “will” should be changed to “shall” and, in s. UWS 17.12 (4) (g), “will” should be changed to “shall.” Also, in sub. (4) (e) (intro.), the word “must” should be replaced by the word “shall.” Finally, when referencing a list of units in the statutes or the Administrative Code, the use of the word “through” should be replaced by the use of the word “to.” [See ss. 227.27 (1) and 990.001 (14), Stats. The entire rule should be reviewed for this problem.]

k. In s. UWS 17.14, the phrase “, at its discretion,” is unnecessary and should be deleted.

l. In s. UWS 17.18, the word “must” in the third sentence should be replaced by the word “shall.”

m. In s. UWS 17.19 (1) (intro.), the phrase “is authorized to” should be replaced by the word “may.”

n. The appropriate method of showing the amendment to s. UWS 18.02 (7) is: ~~“Lands”~~ “University lands.” [See s. 1.06 (1) to (3), Manual. The entire rule should be reviewed for the use of the appropriate amendment style.]

o. In s. UWS 18.08 (1) (d), the word “must” should be replaced by the word “shall.”

p. In s. UWS 18.09 (1) (d), “18.14” is new material and therefore should be underscored.

q. Section UWS 18.11 (6) (b) should be rewritten to eliminate the use of “and/or.” [See s. 1.01 (9), Manual. In most cases, use of the word “or” is sufficient. The entire rule should be reviewed for this problem.]

r. In s. UWS 18.08 (6) (c), “can” should be changed to “may.”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. UWS 17.02 (12), the reference to s. UWS 17.06 should be changed to s. UWS 17.07.

b. In s. UWS 17.08 (1), the cross-references should be preceded by the notation “UWS.” [The entire rule should be reviewed for this problem.]

c. In s. UWS 17.09, the notation “Wis. Stats.” should be replaced by the notation “Stats.”

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Should institutions be required to adopt policies providing for the designation of investigating officers under s. UWS 17.05, as they are required to for the designation of hearing officers under s. UWS 17.06 and hearing committees under s. UWS 17.07?

b. The phrase “pursuant to the policies adopted under sub. (1)” should be added at the end of s. UWS 17.06 (2).

c. In s. UWS 17.07 (2), the phrase “a student or students” should be replaced with “at least one student.”

d. Section UWS 17.07 (2) states that the presiding officer and one other member constitute a quorum for any hearing held by a student nonacademic misconduct hearing committee. Should the rule specify that if a committee consists of more than three members, at least a majority of the membership is required for a quorum?

e. Should the provisions of s. UWS 17.09 (10) be limited to activities involving university-related computing resources?

f. Section UWS 17.09 (11) would presumably authorize the university to expel a student for making any knowingly false statement regarding a university matter, regardless of the seriousness or impact, or lack thereof, of the student’s conduct on the university. This authority seems unnecessarily broad and may have potential for abuse. Could the provision be modified to ensure that sanctions imposed for conduct under this section bear a reasonable relationship to the severity of the offense?

g. Should s. UWS 17.09 (13) apply to on-campus violations of municipal law?

h. In s. UWS 17.10 (1) (c), “An order to make” should be inserted before “restitution.”

i. It is unclear what is meant by “service sanctions” in s. UWS 17.10 (1) (d).

j. In s. UWS 17.10 (3), “cut-off” should be changed to “termination.”

k. Should the rule specify any procedures or standards to be followed by an investigating officer conducting an investigation, other than offering to discuss the matter with the student, under s. UWS 17.11? Also, should the rule establish any standards or policies governing the decision to undertake an investigation?

l. Section UWS 17.11 (1) could describe the specific steps the investigating officer must take to fulfill the requirement to “offer to discuss the matter with the student.” The rule could also provide for formal notice to the student of the charges that have been made against him or her and the possible sanctions that could be imposed based on those charges.

m. Section UWS 17.11 (2) appears to authorize an investigating officer to decide to take no further action only if the officer reaches that decision “as a result of a discussion” with the student who has been charged. Should the rule also allow the officer to reach this decision based on a “review of available information,” as is allowed under sub. (3)?

n. In s. UWS 17.11 (3) (a) 1., “alleged” should be inserted before “misconduct.”

o. Section UWS 17.11 (3) (b) should specify the method by which the report must be delivered to the student. Likewise, s. UWS 17.12 (4) (h) should specify how the decision of the hearing examiner or committee should be delivered to the student and s. UWS 17.19 (2) should specify how notification of emergency suspension should be provided to a student. For example, the current rule, in s. UWS 17.06 (4) (h), specifies that the decision must be served on the student either by personal delivery or by first class U.S. mail to his or her current address as maintained by the institution.

p. Section UWS 17.12 (2) should specify the conditions under which a hearing examiner or committee may order or allow a hearing to take place more than 45 days after receipt of a request or written report.

q. The analysis to the rule should explain why the rule eliminates the right of a student to be represented by an individual of his or her choice, as is provided for under current s. UWS 17.06 (4) (a). Instead of allowing a student to be represented, the rule, in s. UWS 17.12 (4) (a), allows a student to be “accompanied by an advisor” and prohibits the advisor from speaking on the student’s behalf unless given specific permission to do so by the hearing examiner or committee.

r. The analysis to the rule should explain why the rule, in s. UWS 17.12 (4) (b), eliminates the requirement that the hearing committee observe recognized legal privileges.

s. Current s. UWS 17.06 (4) (c) states that any party to a hearing may obtain copies of the record of a hearing at his or her own expense. The rule, in s. UWS 17.12 (4) (c), provides instead that the student charged with misconduct “may request access to the record.” The rule should specify whether access must be granted. In addition, the rule eliminates a provision in the current rule stating that a party that makes a showing of indigence and legal need may be provided a copy of the verbatim hearing testimony without charge. Why does the rule eliminate this provision? Does the university intend to deny a copy of the record to a student who cannot afford to purchase one?

t. The analysis to the rule should explain why the rule, in s. UWS 17.12 (4) (e), provides for a lower standard of proof than is provided under the current rule for imposition of suspension or expulsion for sexual harassment or sexual assault.

u. The analysis to the rule should explain why the rule narrows the authority of the Board of Regents to review cases of nonacademic misconduct. Under the current rule, the Board has authority to review any case of student nonacademic misconduct (s. UWS 17.08). The rule limits the Board’s review authority to cases in which suspension or expulsion is imposed (proposed s. UWS 17.14).

v. Section UWS 17.14 should specify the time frame in which the Board must either reach a decision on a case it has agreed to review or notify the parties that it has denied the review request.

w. Should s. UWS 17.15 contain a requirement to provide proper notice to a student, as is provided under the current rule? See s. UWS 17.09.

x. Current s. UWS 17.10 denies graduation privileges to a student who is subject to, or may be subject to, the following sanctions: restitution, removal from a course in progress, probation, suspension, or expulsion. The rule, in s. UWS 17.16, would also deny graduation privileges to a student who is subject to, or may be subject to, a written reprimand or denial of specified university privileges. Under this provision, when would a student who has received a written reprimand and would otherwise be eligible to graduate be awarded a degree? The rule prohibits the university from awarding a degree to a student who is subject to any disciplinary sanction, so presumably, unless the written reprimand were rescinded, the student would never be allowed to graduate. Also, the rule should specify when a student who is subject to an order to make restitution would be awarded a degree.

y. Section UWS 17.17 states that, on a student's transcript, suspension should be "noted only for the duration of the suspension period." Does this mean that once the suspension has expired, the transcript should no longer contain any notation regarding the suspension?

z. The first sentence of s. UWS 17.18 should clarify that a student may enroll without having to file a petition when the suspension has expired by its own terms under s. UWS 17.17 (1). In addition, should the rule contain time limits similar to those in the current rule, which provide that a suspended student may not petition for readmission until one-half of the suspension period has elapsed, or until one year after the final determination in an expulsion case?

aa. Should s. UWS 17.19 (1) (a) state that if a student has agreed to discuss a matter, an emergency suspension may not be imposed until after the discussion has taken place?

bb. The analysis to the rule should explain why the rule, in s. UWS 17.19 (2), eliminates the right of a student to request a hearing prior to imposition of an emergency suspension, which is currently provided in s. UWS 17.17 (2).

cc. In s. UWS 18.08 (1) (b), the phrase "on all other university lands" is more accurately phrased as "on all university lands not described in sub. (1)." Also, sub. (1) (f) would be more clearly stated as: "This subsection does not apply to police and service animals when those animals are working."

dd. In s. UWS 18.10 (5), the phrase "but not limited to" is unnecessary and should be deleted. Also, the last sentence would be more clearly stated as: "This subsection does not apply to motorized wheelchairs or other mobility devices which have the primary design function of assisting the physically challenged."