

## **APPROVAL OF RULE REVISIONS TO CHAPTER UWS 17 NONACADEMIC STUDENT MISCONDUCT, WIS. ADMIN. CODE**

### **BACKGROUND**

The University of Wisconsin System (UW System) Administration seeks to modify several Board of Regents (Board) administrative rules, known as Ch. UWS 4, Wis. Admin. Code, "Procedures for Dismissal of Faculty;" Ch. UWS 7, Wis. Admin. Code, "Dismissal of Faculty in Special Cases;" Ch. UWS 11, Wis. Admin. Code, "Dismissal of Academic Staff for Cause;" and Ch. UWS 17, Wis. Admin. Code, "Nonacademic Student Misconduct."

All UW System institutions are affected by the proposed rule revisions. This document describes the general background, the procedures used to determine the proposed changes, detailed descriptions of campus comments and responses, and outlines the implications of the action requested for the adoption of Resolution I.1.b.(3), the revisions to Ch. UWS 17 under the conditions outlined in the resolution below.

The Board has statutory authority for Chapter UWS 17 under s. 36.35, Wis. Stats., which reads as follows: "The board shall promulgate rules under ch. 227 governing student conduct and procedures for the administration of violations."

Any of the proposed changes to UWS Ch. 17 presented for review by the Board at this point are consistent with the narrow scope statements. The proposed changes address only those changes necessary to comply with Title IX and spell out VAWA in regard to offenses of sexual harassment, sexual assault, dating violence, domestic violence and stalking.

The current version of UWS Ch. 17 provides a student disciplinary process under which allegations of a violation of those rules, including allegations of sexual misconduct, is handled. Some of the expectations of the U.S. Department of Education cannot be met without modification because they would conflict with certain provisions under the current Chapter, such as certain rights afforded only to an accused student. The modifications contemplated by this rulemaking would incorporate into law what now exists in the System's Guidance and thus reflect best practices as well as the expectations of the U.S. Department of Education. Further, the modifications would permit the University to incorporate those expectations which now are inconsistent with the existing rule. Institutions would adopt policies consistent with the new Chapter.

On August 22, 2015, the Regents approved the creation of a drafting committee consisting of legal staff, faculty, academic staff, and student representatives, as well as UWSA staff, and others, to determine any changes in wording or substance of UWS Ch. 17. The drafting committee convened and chaired by Associate Vice President Washington proposed changes and edits to UWS Ch. 17.

The drafting committee's proposed edits and changes to UWS Ch. 17 were compiled and, together with additional background materials, sent by Interim Senior Vice President Ward to

senior student affairs officers (SSAOs), Title IX coordinators, sexual assault coordinators, conduct officers and student government representatives on January 12, 2015.

Responses to the proposed changes to UWS Ch. 17 were received by Senior Vice President Ward by the deadline on March 6<sup>th</sup>, 2015 (See Appendix B for a compilation of all campus responses received for UWS Ch. 17).

On March 13, 2015, the drafting committee chaired by Associate Vice President Washington reviewed all comments, edits, and questions received by the campus and made recommendations for the final re-written version of UWS Ch. 17.

As requested by the Regents on August 23, 2014, UWSA established the following assurances that support the requested adoption of Resolution I.1.b.(3) below.

#### *Economic Impact*

The Board of Regents hereby determines that the proposed rules shall have minimal to no economic impact locally or statewide. We hereby direct System Administration, pursuant to Wis. Stat. § 227.137, to initiate a comment period of at least fourteen (14) calendar days to solicit information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule in order to determine what, if any, economic impact the rule will have locally or statewide. UW System Administration is hereby authorized to take any and all additional action necessary to comply with this statutory requirement.

#### *Fiscal Estimate*

The Board of Regents hereby determines that the proposed rules shall have minimal to no fiscal impact or effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. There is minimal to no anticipated state fiscal effect during the current biennium and no projected net annualized fiscal impact on state funds. There is minimal to no anticipated fiscal effect on the private sector and no anticipated costs incurred by the private sector in complying with the rules. We hereby direct System Administration to prepare a fiscal estimate in accordance with this determination as directed under Wis. Stat. § 224.14(4). UW System Administration is also authorized to take any and all additional action necessary to comply with this statutory requirement.

#### *Public Hearing*

The Board of Regents hereby authorizes System Administration to proceed with scheduling a public hearing in accordance with Wis. Stat. § 227.17. UW System Administration is hereby authorized to take any and all additional action necessary to comply with this statutory requirement.

### **REQUESTED ACTION**

Adoption of Resolution I.1.b.(3)., approving the Revisions to Administrative Code UWS Ch. 17 Nonacademic Student Misconduct. By approving the revisions to Ch. UWS 17, the Board determines that the proposed rules shall have minimal to no economic impact locally or

statewide; minimal to no fiscal impact; that UWSA will schedule a public hearing; and that UWSA is authorized to take additional action to comply with the statutory requirement, as necessary.

## DISCUSSION

Ch. UWS 17 provides a disciplinary process for dealing with nonacademic student misconduct. The U.S. Department of Education has reaffirmed that Title IX protects students from sexual harassment carried out by institutions of higher education employees. Whereas there are no binding federal regulations interpreting Title IX with respect to addressing allegations of sexual misconduct, the U.S. Department of Education has issued guidance through *Dear Colleague Letters*, which establishes the federal agency's expectations for institutions of higher education that receive federal funding. This guidance is being enforced by the U.S. Department of Education through the Office of Civil Rights (OCR).

A web link to the current existing version of UWS Ch. 17 is available at [\(link\)](#). The following [\(link\)](#) contains the tracked changes version of UWS Ch. 17 with all revisions clearly marked. [\(link\)](#) contains the clean version showing how UWS Ch.17 would read with all revisions incorporated.

### Proposed Changes by Subject Matter

#### *Proposed Changes by Subject Matter for UWS 17:*

A. **Definitions:** The proposed changes include the following terms:

- “Complainant” has been added to clarify that only individuals allegedly harmed by a violation of UWS 4 for the offenses of sexual harassment, sexual assault, stalking, domestic violence or dating violence would have the additional procedural protections under Title IX.
- “Respondent” has been added to clarify the naming convention of the individual accused of violating UWS 17.

B. **Role of Title IX Coordinators:** Institutions must designate at least one qualified or trained employee to coordinate the institution's efforts to comply with and carry out its responsibilities under Title IX. As stated in UWS 17, the institution must include the Title IX Coordinator in the initial processing of the complaint and investigation in cases involving sexual harassment, sexual assault, stalking, dating violence and domestic violence.

C. **Conduct Subject to Disciplinary Action:** “Dating violence,” “domestic violence,” “sexual assault,” “sexual harassment,” and “stalking” (five offenses) have been added with and defined in accordance with state law definitions for purposes of consistency and clarity. When an alleged violation involves any of these five specific offenses, the complainant is provided with additional rights.

**D. Evidentiary Standard of Proof:** The Office for Civil Rights (OCR) states that allegations involving sexual harassment, sexual assault, stalking, dating violence and domestic violence shall have an evidentiary standard of proof of a preponderance of the evidence. UWS 17 currently states that a preponderance of the evidence shall be used in all cases of sexual harassment and sexual assault. Therefore, UWS 17 was revised to require a preponderance of the evidence in all cases involving sexual assault, dating violence, domestic violence, stalking, and sexual harassment..

**E. Investigative Process:** UWS § 17.11 is modified to provide the complainant with all rights provided to the respondent during the investigation.

**F. Hearing Examiner/Hearing Committee:** In cases that proceed to a hearing, the existing Code permits the respondent to select either a hearing examiner or hearing committee to hear the matter. In cases of the five offenses, the university will now have the right to decide whether the matter will be heard by a hearing examiner or hearing committee. This change shall provide equity in the process and ensure that the person(s) hearing the case will have the appropriate expertise and training.

**G. Access to Information During Proceeding:** The proposed changes provide for the complainant and the respondent to be afforded similar and timely access to information that will be used at a hearing. Access to this information must be provided in a manner that is consistent with state and federal privacy laws. For example, prior disciplinary action, student educational records or medical information that is revealed during an investigation or hearing process should not be disclosed to the aggrieved party unless a specific legal exception applies under state or federal law. In cases of sexual harassment, sexual assault, stalking, dating violence and domestic violence, the proposed Administrative Code would provide the complainant with the same information as the respondent, unless such disclosure is prohibited by state or federal law.

**H. Rights of Aggrieved Party During Hearing Process:** As stated in the OCR Guidance, during an investigation related to the five offenses, the complainant and the respondent should be afforded equal rights. The proposed changes would include parity of rights in the following manner:

- The complainant and the respondent would have an equal opportunity to present relevant witnesses and other evidence.
- The parties would be afforded similar and timely access to any information used at the hearing, excluding information that would be excluded from disclosure under state or federal law, such as private or confidential information relating to student educational records, medical records or other employment personnel records.
- Both the complainant and the respondent would be provided with written notification of the outcome of the complaint/proceedings.
- Under the existing code at UWS § 17.12(4)(b), an accused party has the right to confront or cross-examine witnesses (which usually include the complainant).

However, OCR strongly encourages institutions to prevent the respondent and the complainant from personally cross examining each other. Instead, OCR suggests that the parties be allowed to submit questions directly to a trained third party, such as the hearing committee, for consideration. Since UWS § 17.12(4)(c) provides the hearing examiner or committee with the authority to adopt procedures for the questioning of a witness, as needed, no change was necessary.

- Both the complainant and the respondent would have the right to an advisor of his/her choice during the proceedings.

*I. Appeal Rights:* If the investigation results in a finding of no violation, the complainant may appeal the decision in accordance with UWS § 17.13 (to the chancellor). The complainant shall also have equitable appeal rights under 17.13 in regard to the hearing committee or examiner's decision.

In summary, these proposed revisions to UWS Ch. 17 are intended to reconcile any potential inconsistencies between the Administrative Code and the federal standards regarding institutional obligations in addressing issues of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.

## RECOMMENDATION

Approval from the Education Committee and the full Board for revisions to Ch. UWS 17, Wis. Admin. code, is recommended to recognize U.S. Department of Education guidance to institutions of higher education for how they should address on campus and respond to sexual misconduct and sexual assault allegations involving a student or an employee.