

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

[INTRODUCTORY CLAUSE]

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

[ANALYSIS PREPARED BY THE BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM]

Statutes interpreted: Sections 36.09(1), 36.11(1), 36.13(3), and 36.13(5), Stats.

Statutory authority: Sections 36.09(1)(a), (f), and (L), 36.11(1)(a) and (c), 36.13(3), 36.13(5), and Ch.227, Wis. Stats.

Explanation of agency authority: Sections 36.09(1), 36.11(1), 36.13(3), 36.13(5) and ch. 227, Stats., define the scope of the Board's authority to promulgate rules for the dismissal of faculty and indefinite academic staff members.

Related statutes or rules: Current Wis. Admin. Code chs. UWS 4 and UWS 11.

Plain language analysis the proposed rules: Currently, Chapters UWS 4 and UWS 11, Wis. Adm. Code, provide that faculty members with tenured appointments and academic staff members with indefinite appointments may be dismissed for just cause. Probationary faculty or academic staff members may be dismissed prior to the end of their appointment for just cause. The proposed rules deal specifically with circumstances in which faculty and academic staff members have engaged in serious criminal misconduct, which is defined as pleading guilty or no contest to, or being convicted of certain types of felonies under circumstances that pose a substantial risk to members of the university community, or seriously impair the university's missions. The proposed rules establish an expedited dismissal procedure for cases involving serious criminal misconduct that includes an investigation, hearings, and a Board decision on termination within set time periods totaling approximately 60 working days. In addition, the proposed rules allow the employing institution, after consultation with appropriate institutional governance representatives, to suspend the faculty or academic staff member from duty without pay in specified circumstances. The proposed rules further provide protection for constitutionally-protected conduct, expression, or beliefs, and assure adequate due process in the dismissal proceedings.

Summary of, and comparison with, existing or proposed federal regulations: There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states. There are no corresponding rules in adjacent states for comparison.

Summary of factual data and analytical methodologies: There were no factual data or analytical methodologies used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business: The proposed rules affect only faculty and academic staff of the University of Wisconsin System. They have no effect on small business.

Effect on small business: The proposed rules will have no effect on small business.

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[TEXT OF RULE]

SECTION 1. UWS 2.02 is amended to read:

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

SECTION 2. UWS 4.09 is amended to read:

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

SECTION 3. Chapter UWS 7 is created to read:

Dismissal of Faculty in Special Cases

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

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

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

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

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

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

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

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

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

(3) Except as otherwise expressly provided, a faculty member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. UWS 7.03 to 7.06.

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

UWS 7.025 Definition. In this chapter, “consulting” means thoroughly reviewing and discussing the relevant facts and discretionary issues.

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

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

UWS 7.04 Reporting responsibility. Any faculty member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS 7.02(1)(a), in state or federal court, shall immediately report that fact to the chancellor.

UWS 7.05 Expedited process. (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. UWS 7.04 or other credible information that a faculty member has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS 7.02(1)(a), in state or federal court, the chancellor shall:

(a) Within three working days of receipt of the report or information, inform the faculty member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and to advise the chancellor as to whether to proceed under this section or ch. UWS 4.

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

(2) The investigator shall complete and file a report with the chancellor not later than ten working days following the investigator's appointment.

(3) Within three working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the faculty member pursuant to this chapter, to seek dismissal of the faculty member pursuant to ch. UWS 4, to seek an alternative disciplinary sanction, or to discontinue the proceedings. The charges shall be served on the faculty member in the manner specified in s. UWS 4.02(3).

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

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

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

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

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

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

(c) 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 shall offer an opportunity for filing

exceptions to the recommendation, and 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 subsection (3)(a) does not proceed with the hearing before the institutional hearing committee as provided in s. UWS 7.05(4), the board shall take appropriate action within 10 working days of receipt of the statement of charges and the recommendation of the chancellor.

(8) The burden of proving just cause in this chapter shall be clear and convincing evidence.

(9) The chair of the faculty hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

UWS 7.06 Temporary suspension without pay. (1) The chancellor, after consulting 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 of a type listed in s. UWS 7.02(1)(a) and the chancellor, after following the provisions of ss. UWS 7.05(1) through (3), finds, in addition, that there is a substantial likelihood (i) that one or more of the conditions listed in s. UWS 7.02(1)(b) through (e) are present, and (ii) 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 pleaded guilty or no contest to or been convicted of a felony of a type listed in s. UWS 7.02(1)(a) and one or more of the conditions listed in s. UWS 7.02(1)(b) through (e) are present.

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

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

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

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

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

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

SECTION 4. UWS 11.01(1) is amended to read:

(1) A member of the academic staff holding an indefinite appointment may be dismissed only for just cause under ss. UWS 11.02 through 11.106 or for reasons of budget or program under ch. UWS 12.

SECTION 5. UWS 11.01(3) is created to read:

(3) Just cause for dismissal includes, but is not limited to, serious criminal misconduct, as defined in s. UWS 11.102.

SECTION 6. UWS 11.015 is created to read:

UWS 11.015 Definition. In this chapter, “consulting” means thoroughly reviewing and discussing the relevant facts and discretionary issues.

SECTION 7. UWS 11.08 is amended to read:

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~~ consulting 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, but his or her pay shall continue until the chancellor makes a decision as to dismissal; unless the chancellor also makes the determinations set forth in s. UWS 11.105(1) in which case the

suspension from duties may be without pay and the procedures set forth in s. UWS 11.105 shall apply.

SECTION 8. UWS 11.101, 11.102, 11.103, 11.104, 11.105, and 11.106 are created to read:

UWS 11.101 Dismissal for cause in special cases – indefinite academic staff appointments. A member of the academic staff holding an indefinite appointment may be dismissed for serious criminal misconduct, as defined in s. UWS 11.102.

UWS 11.102 Serious criminal misconduct. (1) In this chapter, "serious criminal misconduct" means:

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

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

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

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

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

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

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

(3) Except as otherwise expressly provided, an academic staff member who has engaged in serious criminal misconduct shall be subject to the procedures set forth in ss. UWS 11.103 to 11.106.

(4) Any act required or permitted by ss. UWS 11.103 to 11.106 to be done by the chancellor may be delegated to the provost or another designee pursuant to institutional policies forwarded to the Board of Regents under s. UWS 9.02.

UWS 11.103 Reporting responsibility. Any academic staff member who is charged with, pleads guilty or no contest to, or is convicted of a felony of a type listed in s. UWS 11.102(1)(a), in state or federal court, shall immediately report that fact to the chancellor.

UWS 11.104 Expedited process. (1) Whenever the chancellor of an institution within the University of Wisconsin System receives a report under s. UWS 11.103 or other credible information that an academic staff member holding an indefinite appointment has pleaded guilty or no contest to, or has been convicted of a felony of a type listed in s. UWS 11.102(1)(a), in state or federal court, the chancellor shall:

(a) Within three working days of receipt of the report or information, inform the academic staff member of its receipt and, after consulting with appropriate institutional governance representatives, appoint an investigator to investigate the report or information and advise the chancellor as to whether to proceed under this section or ss. UWS 11.02 to 11.10.

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

(2) The investigator shall be complete and file a report with the chancellor not later than ten working days following the investigator's appointment.

(3) Within three working days of receipt of the investigator's report, the chancellor shall consult with appropriate institutional governance representatives and decide whether to seek dismissal of the academic staff member pursuant to ss. UWS 11.101 to 11.106, to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10, to seek an alternative disciplinary sanction, or to discontinue the proceedings. The charges shall be served on the academic staff member in the manner specified in s. UWS 11.02(2).

(a) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.101 to 11.106, the chancellor shall file charges within two working days of reaching the decision.

(b) If the chancellor decides to seek dismissal of the academic staff member pursuant to ss. UWS 11.02 to 11.10, the chancellor shall file charges and proceed in accordance with the provisions of those sections of this chapter and implementing institutional policies. If, during the course of proceedings under ss. UWS 11.02 to 11.10, the chancellor receives a report under s. UWS 11.103 or other credible information that the academic staff member has pleaded guilty or no contest to or has been convicted of a felony of a type listed in s. UWS 11.102(1)(a), and one or more of the factors listed in s.

11.102(1)(b) through (e) are present, the chancellor may, at that point, elect to follow the procedures for dismissal pursuant to this section.

(c) If the chancellor decides to seek an alternative disciplinary sanction, the procedures under ch. UWS 13, and implementing institutional policies, shall be followed.

(4) If charges seeking dismissal are filed under subsection (3)(a), the academic staff member shall be afforded a hearing before the institutional standing committee charged with hearing dismissal cases and making recommendations under s. UWS 11.03. The hearing shall provide the procedural guarantees enumerated under ss. UWS 11.05 to 11.06, except that the hearing must be concluded, and written findings and a recommendation to the chancellor must be prepared, within 15 working days of the filing of charges.

(5) Within three working days of receipt of the findings and recommendation of the committee under subsection (4), the chancellor shall prepare a written decision on the matter. In the decision, the chancellor may order dismissal of the staff member, may impose a lesser disciplinary action, or may find in favor of the staff member. This decision shall be deemed final unless the Board, upon request of the academic staff member, grants a review based on the record.

(6) The burden of proving just cause in this section shall be clear and convincing evidence.

(7) The chair of the academic staff hearing body, subject to the approval of the chancellor, may extend the time limits set forth in this section if the parties are unable to obtain, in a timely manner, relevant and material testimony, physical evidence or records, or where due process otherwise requires.

UWS 11.105 Temporary suspension from duties without pay. (1) The chancellor, after consulting with appropriate academic staff governance representatives, may suspend an academic staff member holding an indefinite appointment from duties without pay pending the final decision as to his or her dismissal where:

(a) The academic staff member has been charged with a felony of a type listed in s. UWS 11.102(1)(a) and the chancellor, after following the provisions of s. UWS 11.104(1) through (3), finds, in addition, that there is a substantial likelihood (i) that one or more of the conditions listed in s. UWS 11.102(1)(b) through (e) are present, and (ii) that the academic staff member has engaged in the conduct as alleged; or

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

(c) The academic staff member has pleaded guilty or no contest to or been convicted of a felony of the type listed in s. UWS 11.102(1)(a) and one or more of the conditions in s. UWS 11.102(1)(b) through (e) are present.

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

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

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

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

(4) If, after affording the academic staff member the opportunity to be heard, the chancellor determines that the conditions in subsection (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 11.08 shall apply.

UWS 11.106 Board Review. A member of the academic staff on an indefinite appointment who has been dismissed for serious criminal misconduct may appeal this action to the board as provided in s. UWS 11.10

SECTION 9. This rule first applies to conduct occurring on or after the effective date of this rule.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

Dated: _____

Judith A. Temby
Secretary
Board of Regents of the
University of Wisconsin System