

Chapter UWS 11

DISMISSAL OF ACADEMIC STAFF FOR CAUSE

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UWS 11.01 Dismissal for cause—*indefinite academic staff appointments*. (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.

(2) The board’s policy is that members of the academic staff are entitled to enjoy and exercise all rights of United States citizens and to perform their duties in accordance with appropriate professional codes of ethics. This policy shall be observed in determining whether or not just cause for dismissal exists. The burden of proof of the existence of just cause for a dismissal is on the administration.

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

History: Cr. Register, October, 1975, No. 236, eff. 11–1–75; **CR 06–078: am.** (1), cr. (3) Register May 2007, No. 617, eff. 6–1–07.

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

History: CR 06–078: cr. Register May 2007, No. 617, eff. 6–1–07.

UWS 11.02 Responsibility for charges. (1) Whenever the chancellor of an institution receives an allegation which concerns an academic staff member holding an indefinite appointment which appears to be substantial and which, if true, might lead to dismissal under s. UWS 11.01, the chancellor shall request within a reasonable time that the appropriate dean or director investigate the allegation, offer to discuss it informally with the individual, and provide information of rights to which members of the academic staff are entitled under this chapter. If such an investigation and discussion does not result in a resolution of the allegation and if the allegation is deemed sufficiently serious to warrant dismissal, the dean or director shall prepare a written statement of specific charges. A member of the academic staff may be dismissed only after receipt of such a statement of specific charges and, if a hearing is requested by the academic staff member, after a hearing held in accordance with the provisions of this chapter and the subsequently adopted procedures of the institution. If the staff member does not request a hearing, dismissal action shall proceed along normal administrative lines but the provisions of ss. UWS 11.02, 11.08, and 11.09 shall apply. In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid potential prejudice, designate an appropriate administrative officer to act for the dean or director under this section.

(2) Any formal statement of specific charges shall be served personally or by certified mail, return receipt requested. If such service cannot be made within 20 days, service shall be accomplished by first class mail and by publication as if the statement of charges were a summons and the provisions of s. 801.11 (1) (c),

Stats., were applicable. Such service by mailing and publication shall be effective as of the first insertion of the notice of statement of charges in the newspaper.

History: Cr. Register, October, 1975, No. 238, eff. 11–1–75; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474.

UWS 11.03 Hearing body. (1) The chancellor of each institution shall provide for a hearing body charged with hearing dismissal cases and making a report and recommendations under this chapter. Throughout this chapter, the term “hearing body” is used to indicate either a hearing committee or a hearing examiner as designated in the institutional procedures. This hearing body shall operate as the hearing agent for the chancellor pursuant to s. 227.46 (4), Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of fact and decision to the chancellor according to s. UWS 11.07.

(2) With the concurrence of the faculty and the academic staff advisory committee of each institution, the chancellor may provide that dismissal for cause of a member of the academic staff having teaching responsibilities may be heard by the hearing body specified in s. UWS 4.03. If so provided, the hearing shall be held pursuant to the provisions of ch. UWS 11.

History: Cr. Register, October, 1975, No. 238, eff. 11–1–75; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; **correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.**

UWS 11.04 Hearing. If the staff member requests a hearing within 20 days from the service of the statement of charges (25 days if notice is by first class mail and publication), such hearing shall be held not later than 20 days after the request, except that this time limit may be extended by mutual consent of the parties or by order of the hearing body. The request for a hearing shall be addressed in writing to the hearing body established pursuant to s. UWS 11.03. Service of written notice of hearing on the specific charges shall be provided at least 10 days prior to the hearing.

History: Cr. Register, October, 1975, No. 238, eff. 11–1–75.

UWS 11.05 Adequate due process. (1) Each institution shall develop policies and procedures to provide for a fair hearing upon request in the event of dismissal. A fair hearing for an academic staff member whose dismissal is sought under s. UWS 11.01 shall include the following:

- (a) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
- (b) A right to be heard in his or her defense;
- (c) A right to counsel and/or other representative, and to offer witnesses;
- (d) A right to confront and cross-examine adverse witnesses;
- (e) A verbatim record of all hearings, which might be a sound recording, provided at no cost;

(f) Written findings of fact and decision based on the hearing record;

(g) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; **correction in (1) (g) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.**

UWS 11.06 Procedural guarantees. (1) The following requirements shall also be observed:

(a) Any person who participated in the investigation of allegations leading to the filing of a statement of charges, or in the filing of a statement of charges, or who is a material witness shall not be qualified to participate as a member of the hearing body;

(b) The hearing shall be closed unless the staff member under charges requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., Open Meeting Law);

(c) The hearing body shall not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges;

(d) The burden of proof of the existence of just cause is on the administration or its representatives;

(e) If a staff member whose dismissal is sought has requested a hearing, discontinuance of the proceeding by the institution is deemed a withdrawal of charges and a finding that the charges were without merit;

(f) Nothing in par. (e) shall prevent the settlement of cases by mutual agreement between the administration and the staff member, with the chancellor's approval, at any time prior to a final decision by the chancellor; or when appropriate, with the board's approval prior to a final decision by the board;

(g) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

(2) If the institutional policies and procedures provide that dismissal cases be heard by a hearing committee, the following requirements shall be observed:

(a) The committee may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of replacements equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the policies and procedures adopted by the institution;

(b) If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the committee concerning its wishes in this regard. The function of legal counsel shall be to advise the committee, consult with them on legal matters, and such other responsibilities as shall be determined by the committee within the provisions of the policies and procedures adopted by the institution.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

UWS 11.07 Recommendations: to the chancellor. The hearing body shall send to the chancellor and to the academic staff member concerned, as soon as practicable after conclusion of a hearing, a verbatim record of the testimony and a copy of its report, findings, and recommendations. After reviewing the matter on record and considering arguments if submitted by the parties, the chancellor shall issue a decision. In that 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 review based on the record.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.

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 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 salary 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.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; **CR 06-078: am. Register May 2007 No. 617, eff. 6-1-07.**

UWS 11.09 Date of dismissal. A decision by the chancellor ordering dismissal shall specify the effective date of the dismissal.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.

UWS 11.10 Board review. A member of the academic staff on indefinite appointment who has been dismissed for cause by the chancellor following a hearing may appeal this action to the board. Any appeal must be made within 30 days of the date of the decision of the chancellor to dismiss. Upon receiving an appeal the board shall review the case on the record. Following such review the board may confirm the chancellor's decision, or direct a different decision, or approve a further hearing before the board with an opportunity for filing exceptions to the hearing body's recommendations or the chancellor's decision and for oral argument on the record. If further review with opportunity for oral argument on the record is provided, this review shall be closed unless the staff member requests an open hearing. (See subch. V of ch. 19, Stats., Open Meeting Law.) All decisions of the board, whether after review on the record or after oral argument, shall be expressed in writing and shall indicate the basis for such decision.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

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.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

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 par. (b), (c), (d), or (e) 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.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

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.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

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 3 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 2 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 10 working days following the investigator's appointment.

(3) Within 3 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 2 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. UWS 11.102 (1) (b) through (e) are pres-

ent, 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 sub. (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 3 working days of receipt of the findings and recommendation of the committee under sub. (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.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

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 1) that one or more of the conditions listed in s. UWS 11.102 (1) (b) through (e) are present, and 2) 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 sub. (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 2 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 par. (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 par. (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 sub. (1) are not present or that a suspension without pay is otherwise not warranted, the provisions of s. UWS 11.08 shall apply.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

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.

History: CR 06-078: cr. Register May 2007 No. 617, eff. 6-1-07.

UWS 11.11 Dismissal for cause—fixed term or probationary academic staff appointments. A member of the academic staff holding a probationary appointment, or a member of the academic staff holding a fixed term appointment and having completed an initial specified period of time, may be dismissed prior to the end of the contract term only for just cause or for reasons of budget or program under ch. UWS 12. A nonrenewal of such an appointment is not a dismissal under this section. A dismissal shall not become effective until the individual concerned has received a written notification of specific charges and has been offered an opportunity for a hearing before the appropriate dean or director or his/her designee. If such hearing is requested, a determination of just cause and notification of dismissal shall be made by the dean or director or designee. If no hearing is requested the dismissal is effected by the specifications in the original notification of charges. The hearing before the dean, director, or designee shall provide the academic staff member with an opportunity to present evidence and argument concerning

the allegations. Dismissal shall be effective immediately on receipt of written notification of the decision of the dean or director or designee unless a different dismissal date is specified by the dean or director. Dismissals for cause shall be appealable by filing an appeal with the hearing body established under s. UWS 11.03. The burden of proof as to the existence of just cause on appeal shall be on the administration or the authorized official. The provisions of s. UWS 11.04, procedural guarantees, contained in ss. UWS 11.05 and 11.06 and the review provisions of s. UWS 11.07, shall be applicable to the appeal proceeding. In no event, however, shall a decision favorable to the appellant extend the term of the original appointment. If a proceeding on appeal is not concluded before the appointment expiration date, the academic staff member concerned may elect that such proceeding be carried to a final decision. Unless such election is made in writing, the proceeding shall be discontinued at the expiration of the appointment. If the chancellor ultimately decides in favor of the appellant, salary lost during the interim period between the effective date of dismissal and the date of the chancellor's decision or the end of the contract period, whichever is earlier, shall be restored. In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid potential prejudice, designate an appropriate administrative officer to act for the dean or director under this section.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.

UWS 11.12 Dismissal for cause—teaching members of the academic staff. The policies and procedures of each institution may provide that dismissal for cause of a member of the academic staff having teaching responsibilities and holding a probationary appointment or a fixed term appointment may proceed under ss. UWS 11.02 to 11.10. If the institutional policies and procedures do not specifically make such provisions, dismissal for cause shall be made pursuant to s. UWS 11.11.

History: Cr. Register, October, 1975, No. 238, eff. 11-1-75.