

STATE OF WISCONSIN
Board of Regents of the University of Wisconsin System

**IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF
REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM**

**ORDER OF THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM
AMENDING AND ADOPTING RULES (CR 15-060)**

ORDER

The Board of the University of Wisconsin System orders the repeal of UWS 17.13 (1) (a), (b) and (c) and (2); the amendment of UWS 17.05, 17.11 (2), (3) and (4) (a) 2. and 4., (b) and (c) (intro.), 1. and 2., 17.12 (1), (2), (3), (4) (b), (c) 3., and (d), (f) 3., (h), (i), (j) and (k) 17.13 (1), 17.14, 17.15, 17.16, 17.17 (2), (3), (4) and (5), 17.18 and 17.19 (1) and (2) (intro.), (a) and (c) (intro.) and 1., (3), (4) and (5); and the creation of UWS 17.02 (2)(m) and (14)(m), 17.09 (17), (18) and (19), and 17.13 (2) (intro.), (a) and (b), (3) (intro.), (a), (b) and (c) and (4), relating to student nonacademic disciplinary procedures.

Analysis by the Board of Regents of the University of Wisconsin System

ANALYSIS

Statute Interpreted: § 36.35

Statutory authority: Wis. Stat. § 36.35

Explanation of agency authority:

Under s. 36.35, Stats., "The board shall promulgate rules under ch. 227 governing student conduct and procedures for the administration of violations."

Related statute or rule: N/A

Plain language analysis:

The current version of ch. UWS I 7 provides a student disciplinary process under which allegations of a violation of those rules, including allegations of sexual misconduct, is handled. This process has been fair and effective since it was first published in 1996. In 2009, the chapter was amended through the administrative rule-making process to update the chapter and modify certain provisions to underscore the educational emphasis of the nonacademic student disciplinary process. The chapter authorizes each institution of the University of Wisconsin System to adopt consistent policies and procedures.

In response to the guidance issued by the U.S. Department of Education in the last few years, the University of Wisconsin System Administration provided written guidance to UW institutions to acknowledge the U. S. Department of Education's expectations for the manner in which institutions handle sexual misconduct on campus. This guidance, however, was developed with the acknowledgment that it does not supersede ch. UWS I 7. Consequently, some of the expectations of the U.S. Department of Education cannot be met 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.

The alternative would be to continue to operate with both ch. UWS 17 and the guidance. This, however, would be less effective and could lead to confusion. Instead of one single policy that is intended to be easily understood by students, the current framework includes ch. UWS 17, the internal guidance provided by the University of Wisconsin System Administration, and guidance provided by the U.S. Department of Education.

Summary of, and comparisons with, existing or proposed regulations:

Title IX of the Education Amendments of 1972 provides that "[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Currently, there are no federal regulations interpreting this law with respect to addressing allegations of sexual misconduct; however, the U.S. Department of Education has issued guidance through Dear Colleague Letters which establish 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 for Civil Rights.

Comparison with rules in adjacent states: N/A

Summary of factual data and analytical methodologies: N/A

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This rule was posted for 14 days for economic impact comments and none were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached

Anticipated costs incurred by private sector:

There are no anticipated fiscal costs on the private sector.

Effect on small business:

There is no anticipated economic effect of the proposed rule.

Agency contact person: (including email and telephone)

Jane Radue
Executive Director and Corporate Secretary
Board of Regents of University of Wisconsin System
1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706;
Telephone 608-262-4808;
email address: jradue@uwsa.edu.

Place where comments are to be submitted and deadline for submission:

The “Notice of Public Comment Period on Economic Impact and Fiscal Estimate” for ch. UWS 17 was available on the UW System homepage: <https://www.wisconsin.edu/> (Look under “News, Events, & Announcements”) and the Board of Regents page: <https://www.wisconsin.edu/regents/>. The notice remained open from April 17, 2015 to May 1, 2015. No comments were received during this period.

Public comments may be submitted to the agency in one of the following locations: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or adminrules.wisconsin.gov; (2) by email to board@uwsa.edu; (3) at a public hearing scheduled from 10:00 a.m. to 1:00 p.m. on October 26, 2015 in the Overture Room, Gordon Dining and Event Center, 770 W. Dayton Street, Madison, Wisconsin; or (4) by mail to Jane Radue, Executive Director, Office of the

Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin. The deadline for submission of comments is November 2, 2015.

TEXT OF RULE

Section 1. UWS 17.02 (2)(m) is created to read:

- (m) “Complainant” means any individual who is reported to have been subjected to sexual harassment, sexual assault, dating violence, domestic violence or stalking, as defined in s. UWS 17.09.

Section 2. UWS 17.02 (14)(m) is created to read:

- (m) “Respondent” means any student who is accused of violating any provision of this chapter, and was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred.

Section 3. UWS 17.05 is amended to read:

UWS 17.05 Designation of investigating officer. The chief administrative officer of each institution shall designate an investigating officer or officers for allegations of student nonacademic misconduct. The investigating officer shall investigate student nonacademic misconduct and initiate procedures for nonacademic misconduct under s. UWS 17.11. For allegations involving sexual assault, domestic violence, dating violence, stalking or sexual harassment, the chief administrative officer shall involve the Title IX Coordinator, or designee, in accordance with applicable institutional policies.

Section 4. UWS 17.09 (17) is created to read:

- (17) DATING VIOLENCE. Violence committed by a student against another person with whom they are in a “dating relationship” as defined in s. 813.12(1)(ag) Stats.

Section 5. UWS 17.09 (18) is created to read:

- (18) DOMESTIC VIOLENCE. Conduct defined as “domestic abuse” in ss. 813.12(1)(am) and 968.075 Stats.

Section 6. UWS 17.09 (19) is created to read:

- (19) SEXUAL HARASSMENT. Conduct defined in s. 111.32(13) Stats or as defined in Board of Regent Policy that addresses sexual harassment.

Section 7. UWS 17.11 (2) is amended to read:

- (2) CONFERENCE WITH ~~STUDENT-RESPONDENT~~. When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly contact the ~~student respondent~~ in person, by telephone, or by electronic mail to offer to discuss the ~~matter with student~~. The purpose of this discussion is to permit the investigating officer to review with the student the basis for his or her belief that the student engaged in matter, review the investigating officer's basis for believing that the respondent engaged in nonacademic misconduct, and to afford the student-respondent an opportunity to respond. If the student does not respond fails to respond to the investigating officer's offer to discuss the matter, the investigating officer may proceed to make a determination on the basis of the available information. A complainant shall have all the rights provided to the respondent in this subsection.

Section 8. UWS 17.11 (3) is amended to read:

- (3) DETERMINATION BY THE INVESTIGATING OFFICER THAT NO DISCIPLINARY SANCTION IS WARRANTED. If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did not in fact occur, or that no disciplinary sanction is warranted under the circumstances, the matter will be considered resolved without the necessity for further action. The investigating officer shall simultaneously notify the respondent and the complainant of this outcome and offer to discuss it separately with either one. If the investigating officer determines that nonacademic misconduct did not occur or that no disciplinary sanction is warranted, the complainant may appeal this decision in accordance with s. UWS 17.13.

Section 9. UWS 17.11 (4)(a)2. and 4. are amended to read:

2. A description of all information available to the university regarding the alleged misconduct. Such information shall be available to the ~~student~~ complainant and the respondent, except as may be precluded by applicable state or federal law.
4. Notice of the ~~student-respondent's~~ right to a hearing.

Section 10. UWS 17.11 (4)(b) is amended to read:

- (b) The written report shall be delivered simultaneously to the ~~student-respondent~~ and complainant, excluding any information that may be precluded by applicable state or federal law.

Section 11. UWS 17.11 (4)(c)(intro) is amended to read:

- (c) A ~~student-respondent~~ who receives a written report under this section has the right to a hearing under s. UWS 17.12 to contest the determination that nonacademic misconduct occurred, the choice of disciplinary sanctions, or both.

Section 12. UWS 17.11 (4)(c)1 and 2 is amended to read:

1. Where the disciplinary sanction sought is one of those listed in s. UWS 17.10 (1) (a) to (g), and if the ~~student-respondent~~ desires a hearing, the ~~student-respondent~~ shall file a written request with the student affairs officer within 10 days of the date the written report is delivered to the respondent. If the ~~student-respondent~~ does not request a hearing within this period, the determination of nonacademic misconduct shall be regarded as final, and the disciplinary sanction sought shall be imposed.
2. Where the disciplinary sanction sought is one of those listed in s. UWS 17.10 (1) (h) to (j), the investigating officer shall forward a copy of the written report under par. (b) to the student affairs officer. The student affairs officer shall, upon receipt of the written report, proceed under s. UWS 17.12 to schedule a hearing on the matter. A hearing shall be conducted unless the ~~student-respondent~~ waives, in writing, the right to such a hearing.

Section 13. UWS 17.12 (1), (2), and (3) are amended to read:

- (1) A ~~student-respondent~~ who requests a hearing, or for whom a hearing is scheduled under s. UWS 17.11 (4) (c) 2., shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee. In cases of sexual assault, dating violence, domestic violence, stalking or sexual harassment the university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.
- (2) If a ~~student-respondent~~ requests a hearing under s. UWS 17.11 (4) (c) 1., or a hearing is required to be scheduled under s. UWS 17.11 (4) (c) 2., the student affairs officer shall take the necessary steps to convene the hearing and shall schedule it within 15 days of receipt of the request or written report. The hearing shall be conducted within 45 days of receipt of the request or written report, unless a different time period is mutually agreed upon by the ~~student-respondent~~ and investigating officer, or is ordered or permitted by the hearing examiner or committee.

- (3) No less than 5 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, a full explanation of the facts upon which the determination of misconduct was based, and shall provide the ~~student-respondent~~ and the complainant with access to or copies of the investigating officer's explanation, together with any other materials provided to the hearing examiner or committee by the investigating officer, including any additional available information of the type described in s. UWS 17.11 (4) (a) 2.

Section 14. UWS 17.12 (4)(b) is amended to read:

- (b) The ~~student-respondent~~ shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on his or her own behalf, and the right to be accompanied by an advisor of the ~~student-respondent's~~ choice. The advisor may be a lawyer. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (a) to (h), the advisor may counsel the ~~student-respondent~~ but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the ~~student-respondent~~ except at the discretion of the hearing examiner or committee. In cases where the recommended disciplinary sanction is identified in s. UWS 17.10 (1) (i) or (j), or where the ~~student-respondent~~ has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on behalf of the ~~student-respondent~~. In accordance with the educational purposes of the hearing, the ~~student-respondent~~ is expected to respond on his or her own behalf to questions asked of him or her during the hearing. The complainant shall have all the rights provided to the respondent in this subsection.

Section 15. UWS 17.12(4)(c)3. is amended to read:

3. May take reasonable steps to maintain order, and to adopt procedures for the questioning of a witness appropriate to the circumstances of that witness's testimony, provided, however, whatever procedure is adopted, the ~~student-respondent~~ complainant and respondent are allowed to effectively question the witness.

Section 16. UWS 17.12 (4)(d) is amended to read:

- (d) The hearing examiner or committee shall make a record of the hearing. The record shall include a verbatim record of the testimony, which may be a sound recording, and a file of the exhibits offered at the hearing. The respondent and the complainant may access the record, except as may be precluded by applicable state or federal law.

Section 17. UWS 17.12 (4)(f)3. is amended to read:

3. A preponderance of the evidence, regardless of the sanction to be imposed, in all cases of sexual harassment ~~and~~, sexual assault, dating violence, domestic violence or stalking.

Section 18. UWS 17.12(4)(h), (i), (j), and (k) are amended to read:

- (h) The hearing shall be conducted by the hearing examiner or committee, and the university's case against the ~~student-respondent~~ shall be presented by the investigating officer or his or her designee.
- (i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered simultaneously to the ~~student-respondent~~ and the complainant, excluding information that may be precluded by state or federal law. The decision shall become final within 14 days of the date on the written decision, unless an appeal is taken under s. UWS 17.13.
- (j) If a party fails to appear at a schedule hearing and to proceed, the hearing examiner or committee may ~~either dismiss the case or, find that the student-committee the misconduct alleged.~~ issue a decision based upon the information provided.
- (k) Disciplinary hearings are subject to the Wisconsin open meetings law and may be closed if the ~~student whose case is being heard~~ respondent or complainant requests a closed hearing or if the hearing examiner or committee determines that it is necessary to hold a closed hearing, as permitted under the Wisconsin open meetings law. Deliberations of the committee shall be held in closed session, in accordance with s. 19.85, Stats. As such, proper notice and other applicable rules shall be followed.

Section 19. UWS 17.13(1) is amended to read:

- (1) Where the sanction prescribed by the hearing examiner or committee is one of those listed in s. UWS 17.10 (1) (h) to (j), the ~~student-respondent~~ may appeal in writing to the chief administrative officer within 14 days of the date of the written decision to review the decision of the hearing examiner or committee, based upon the record. ~~In such a case, the chief administrative officer has 30 days from receipt of the student's appeal to respond and shall sustain the decision of the nonacademic misconduct hearing examiner or committee unless the chief administrative officer finds any of the following: In cases involving sexual assault, dating violence, domestic violence, stalking or sexual harassment, the complainant shall be notified of the appeal.~~

Section 20. UWS 17.13(1) (a), (b), and (c) are repealed.

Section 21. UWS 17.13(2) is repealed.

Section 22. UWS 17.13(2) (intro.), (a), and (b) are created to read:

- (2) In cases involving sexual assault, dating violence, domestic violence, stalking or sexual harassment, the following appeal rights shall be provided:
- (a) The complainant may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the investigating officer pursuant to s. UWS 17.11(3), the hearing committee, or examiner pursuant to s. UWS 17.12(i). The appeal shall be based upon the record. The respondent shall be notified of the appeal.
 - (b) The respondent may appeal in writing to the chief administrative officer within 14 days of the date of the decision of the hearing committee, or examiner pursuant to s. UWS 17.12(i). The appeal shall be based upon the record. The complainant shall be notified of the appeal.

Section 23. UWS 17.13(3) (intro.), (a), (b), and (c) are created to read:

- (3) The chief administrative officer has 30 days from receipt of an appeal to respond and shall sustain the decision unless the chief administrative officer finds any of the following:
- (a) The information in the record does not support the findings or decision.
 - (b) Appropriate procedures were not followed which resulted in material prejudice to the respondent or complainant.
 - (c) The decision was based on factors proscribed by state or federal law.

Section 24. UWS 17.13(4) is created to read:

- (4) If the chief administrative officers makes a finding under sub. (3), the chancellor may return the matter for consideration, or may invoke an appropriate remedy of his or her own. The chief administrative officer's decision shall be communicated simultaneously to the respondent and the complainant.

Section 25. UWS 17.14 is amended to read:

UWS 17.14 Discretionary appeal to the board of regents. Institutional decisions under ss. UWS 17.11 to 17.13 shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by any party within 14 days of the final institutional decision. In cases involving sexual assault, dating violence, domestic violence, stalking or sexual harassment, the non-appealing party shall receive notice of the appeal.

Section 26. UWS 17.15 is amended to read:

UWS 17.15 Settlement. The procedures set forth in this chapter allow the university and a ~~student-respondent~~ to enter into a settlement agreement regarding the alleged misconduct, after proper notice has been given. Any such agreement and its terms shall be in writing and signed by the ~~student-respondent~~ and the investigating officer or student affairs officer. The case is concluded when a copy of the signed agreement is delivered to the ~~student-respondent~~. The investigating officer shall confer with the complainant regarding the proposed settlement and provide notice of the outcome.

Section 27. UWS 17.16 is amended to read:

UWS 17.16 Effect of discipline within the institution. A ~~student-respondent~~ who, at the time of commencement, is subject to a continuing disciplinary sanction under s. UWS 17.10(1) or unresolved disciplinary charges as a result of a report under s. UWS 17.11, shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

Section 28. UWS 17.17 (2), (3), (4), and (5) are amended to read:

- (2) ~~A student~~ An individual who is suspended from one institution in the University of Wisconsin System may not enroll in another institution in the system until the suspension has expired by its own terms, except as provided in s. UWS 17.18.
- (3) ~~A student~~ An individual who is expelled from one institution in the University of Wisconsin System may not enroll in another institution in the system, except as provided in s. UWS 17.18.
- (4) ~~A person~~ An individual who is in a state of suspension or expulsion from the university under this chapter, or who leaves or withdraws from the university while under nonacademic misconduct charges under this chapter, may not be present on any campus without the written consent of the chief administrative officer of that campus.

- (5) Upon completion of a suspension period, an student-individual who is academically eligible may re-enroll in the institution which suspended him or her, provided all conditions from previous disciplinary sanctions have been met.

Section 29. UWS 17.18 is amended to read:

UWS 17.18 Petition for restoration of rights after suspension or expulsion. A ~~student~~ respondent who has been suspended may petition to have his or her student status, rights, and privileges restored before the suspension has expired by its own terms under s. UWS 17.17 (2). A ~~student-respondent~~ who has been expelled may petition for the right to apply for readmission. The petition shall be in writing and directed to the chief administrative officer of the institution from which the ~~student-respondent~~ was suspended or expelled or of a different University of Wisconsin institution to which the ~~student-respondent~~ seeks admission. The chief administrative officer shall make the readmission decision. In cases of sexual harassment, sexual assault, dating violence, domestic violence and stalking cases, the readmission decision should be made in consultation with the Title IX coordinator, and the complainant should be notified of any change to the disciplinary outcome.

Section 30. UWS 17.19(1) is amended to read:

- (1) The chief administrative officer may impose an emergency suspension on a ~~student~~ respondent, pending final institutional action on a report of nonacademic misconduct, in accordance with the procedures of this section.

Section 31. UWS 17.19 (2)(intro.), (a), (c)(intro), and (c)1. are amended to read:

- (2) The chief administrative officer of each institution may impose an emergency suspension on a ~~student-respondent~~ when all of the following conditions are met:
- (a) The investigating officer has made a reasonable attempt to offer the ~~student-respondent~~ the opportunity for discussion, either in person or by telephone.
- (c) The chief administrative officer concludes, based on the available information, that the misconduct occurred and that the ~~student-respondent's~~ continued presence on campus meets one or more of the following conditions:

1. Would constitute a potential for serious harm to the ~~student-respondent~~.

Section 32. UWS 17.19 (3), (4), and (5) are amended to read:

- (3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), ~~he or she~~ the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the ~~student-respondent~~. In cases of sexual harassment, sexual assault, dating violence, domestic violence and stalking, the written notification of the emergency suspension shall be delivered simultaneously to the complainant and the respondent. The chief administrative officer's decision to impose an emergency suspension shall be effective immediately when delivered to the ~~student-respondent~~ and is final.
- (4) Where an emergency suspension is imposed, the hearing on the underlying allegations of misconduct shall be held, either on or outside of university lands, within 21 days of the imposition of the emergency suspension, unless the ~~student-respondent~~ agrees to a later date.
- (5) An emergency suspension imposed in accordance with this section shall be in effect until the decision in the hearing on the underlying charges pursuant to s. UWS 17.12 is rendered or the chief administrative officer rescinds the emergency suspension. In no case shall an emergency suspension remain in effect for longer than 30 days, unless the ~~student-respondent~~ agrees to a longer period.

Section 33. EFFECTIVE DATE:

The rules adopted in this order shall take effect on the first day to the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2) (intro.), Stats.

(END OF TEXT OF RULE)

This rule shall take effect on July 1, 2016 as provided in s. 227.22 (2) (intro.), Stats.