

Chapter UWS 4

PROCEDURES FOR DISMISSAL

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UWS 4.01 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/her term of appointment only by the board and only for just cause and only after due notice and hearing. A decision not to renew a probationary appointment or not to grant tenure does not constitute a dismissal.

(2) A faculty member is entitled to enjoy and exercise all the rights and privileges of a United States citizen, and the rights and privileges of academic freedom as they are generally understood in the academic community. 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.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 4.015 Definitions. The following terms shall have the meaning given below:

(1) "Clear and convincing evidence" means information that would persuade a reasonable person to have a firm belief that a proposition is more likely true than not true. It is a higher standard of proof than "preponderance of the evidence."

(2) "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 subs. (5), (6), (9), (10), and (11).

(3) "Complaint" means an allegation against a faculty member reported to an appropriate university official.

(4) "Consult" or "consulting" means thoroughly reviewing and discussing the relevant facts and discretionary issues.

(5) "Dating violence" means violence committed by an employee against another person with whom they are in a "dating relationship" as defined in s. 813.12 (1) (ag), Stats.

(6) "Domestic violence" means conduct defined as "domestic abuse" in ss. 813.12 (1) (am) and 968.075, Stats.

(7) "Preponderance of the evidence" means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."

(8) "Reporting Party" means one or more individuals or groups filing a complaint as defined in sub. (3). A reporting party may also be a complainant as defined in sub. (2).

(9) "Sexual harassment" means conduct defined in s. 111.32, Stats.

(10) "Sexual assault" means conduct defined in s. 940.225, Stats.

(11) "Stalking" means conduct defined in s. 940.32, Stats.

History: CR 15-061: cr. Register June 2016 No. 726, eff. 7-1-16; correction in (2) and (8) under 35.17, Stats., Register June 2016 No. 726.

UWS 4.02 Responsibility for charges. (1) Whenever the chancellor of an institution within the University of Wisconsin system receives a complaint against a faculty member which he

or she deems substantial and which, if true, might lead to dismissal under s. UWS 4.01, the chancellor, or designee, shall within a reasonable time initiate an investigation and shall, prior to reaching a decision on filing charges, offer to discuss the matter informally with the faculty member. For complaints of sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the chancellor, or designee, shall appoint the Title IX Coordinator, or designee, to initiate an investigation in accordance with applicable policies. The chancellor, or designee, shall also offer to discuss the matter informally with the complainant, and provide information regarding rights under this chapter. Both the faculty member and the complainant shall have the right to be accompanied by an advisor of their choice at any meeting or proceeding that is part of the institutional disciplinary process. A faculty member may be dismissed only after receipt of a written statement of specific charges from the chancellor as the chief administrative officer of the institution and, if a hearing is requested by the faculty member, in accordance with the provisions of this chapter. If the faculty member does not request a hearing, action shall proceed along normal administrative lines but the provisions of ss. UWS 4.02, 4.09, and 4.10 shall still apply.

(2) Any formal statement of specific charges for dismissal sent to a faculty member shall be accompanied by a statement of the appeal procedures available to the faculty member.

(3) The statement of 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. If the statement of charges includes sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the statement shall be provided to the complainant upon request, except as may be precluded by applicable state or federal law.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; 2015 Wis. Act 330 ss. 6, 20: am. (1), (3) Register April 2016 No. 724, eff. 5-1-16; CR 15-061: am. (1), (3) Register June 2016 No. 726, eff. 7-1-16.

UWS 4.03 Standing faculty committee. The faculty of each institution shall provide a standing committee charged with hearing dismissal cases and making recommendations under this chapter. This standing faculty committee shall operate as the hearing agent for the board 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 law and decision to the board according to s. UWS 4.07.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617.

UWS 4.04 Hearing. If the faculty member requests a hearing within 20 days of notice of the statement of charges (25 days if notice is by first class mail and publication), such a hearing shall

be held not later than 20 days after the request except that this time limit may be enlarged by mutual written consent of the parties, or by order of the hearing committee. The request for a hearing shall be addressed in writing to the chairperson of the standing faculty committee created under s. UWS 4.03.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 4.05 Adequate due process. (1) A fair hearing for a faculty member whose dismissal is sought under s. UWS 4.01 shall include the following:

- (a) Service of written notice of hearing on the specific charges at least 10 days prior to the hearing;
- (b) A right to the names of witnesses and of access to documentary evidence upon the basis of which dismissal is sought;
- (c) A right to be heard in his/her defense;
- (d) A right to an advisor, counsel, or other representatives, and to offer witnesses;
- (e) A right to confront and cross-examine adverse witnesses. If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the hearing committee may reasonably restrict the faculty member or the complainant from questioning each other;
- (f) A verbatim record of all hearings, which might be a sound recording, provided at no cost;
- (g) Written findings of fact and decision based on the hearing record;
- (h) Admissibility of evidence governed by s. 227.45 (1) to (4), Stats.

(2) If the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the complainant shall have all the rights provided to the faculty member in sub. (1) (a) to (h), except as may be precluded by applicable state or federal law.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) (h) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; correction in (1) (h) made under s. 13.93 (2m) (b) 7., Stats., Register May 2007 No. 617; **CR 15-061: am. (1) (d), (e), cr. (2) Register June 2016 No. 726, eff. 7-1-16; correction in (2) under 35.17, Stats., Register June 2016 No. 726.**

UWS 4.06 Procedural guarantees. (1) Any hearing held shall comply with the requirements set forth in s. UWS 4.05. The following requirements shall also be observed:

- (a) The burden of proof of the existence of just cause is on the administration or its representatives;
- (am) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the standard of proof shall be a preponderance of the evidence;
- (b) No faculty member 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 be qualified to sit on the committee in that case;
- (c) The hearing shall be closed unless the faculty member under charges requests an open hearing, in which case it shall be open (see subch. V of ch. 19, Stats., Open Meeting Law);
- (d) The faculty hearing committee may, on motion of either party, and, if the complaint involves sexual harassment, sexual assault, dating violence, domestic violence, or stalking, on the motion of the complainant, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under s. UWS 4.03;
- (e) The faculty hearing committee 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;

(f) If the faculty 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 rules and procedures adopted by the faculty of the institution in establishing the standing faculty committee under s. UWS 4.03;

(g) If a proceeding on charges against a faculty member not holding tenure is not concluded before the faculty member's appointment would expire, he/she may elect that such proceeding be carried to a final decision. Unless he/she so elects in writing, the proceeding shall be discontinued at the expiration of the appointment;

(h) If a faculty 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;

(i) Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration and the faculty member, with board approval, at any time prior to a final decision by the board;

(j) Adjournment shall be granted to enable the parties, including the complainant, to investigate evidence as to which a valid claim of surprise is made.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; **CR 15-061: cr. (1) (am), am. (1) (d), (i), (j) Register June 2016 No. 726, eff. 7-1-16.**

UWS 4.07 Recommendations: to the chancellor: to the regents. (1) The faculty hearing committee shall send to the chancellor and to the faculty member concerned, as soon as practicable after conclusion of the hearing, a verbatim record of the testimony and a copy of its report, findings, and recommendations. The committee may determine that while adequate cause for discipline exists, some sanction less severe than dismissal is more appropriate. Within 20 days after receipt of this material the chancellor shall review it and afford the faculty member an opportunity to discuss it. The chancellor shall prepare a written recommendation within 20 days following the meeting with the faculty member, unless his/her proposed recommendation differs substantially from that of the committee. If the chancellor's proposed recommendations differ substantially from those of the faculty hearing committee, the chancellor shall promptly consult the faculty hearing committee and provide the committee with a reasonable opportunity for a written response prior to forwarding his/her recommendation. If the recommendation is for dismissal, the recommendation shall be submitted through the president of the system to the board. A copy of the faculty hearing committee's report and recommendations shall be forwarded through the president of the system to the board along with the chancellor's recommendation. A copy of the chancellor's recommendation shall also be sent to the faculty member concerned and to the faculty committee. For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the complainant shall have all rights provided to the faculty member in this paragraph, including the right to receive a copy of the chancellor's recommendation, except as may be precluded by applicable state or federal law.

(2) Disciplinary action other than dismissal may be taken by the chancellor, after affording the faculty member an opportunity to be heard on the record, except that, upon written request by the faculty member, such action shall be submitted as a recommendation through the president to the board together with a copy of the faculty hearing committee's report and recommendation. For complaints involving sexual harassment,

sexual assault, dating violence, domestic violence, or stalking, the complainant shall have all the rights provided to the faculty member in this paragraph.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; **CR 15-061: am. Register June 2016 No. 726, eff. 7-1-16.**

UWS 4.08 Board review. (1) If the chancellor recommends dismissal, the board shall review the record before the faculty hearing committee and provide an opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, unless the board decides to drop the charges against the faculty member without a hearing or the faculty member elects to waive a hearing. This hearing shall be closed unless the faculty member requests an open hearing (see subch. V of ch. 19, Stats., Open Meeting Law). For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the complainant shall have the same opportunity for filing exceptions to the recommendations of the hearing committee or chancellor, and for oral arguments, as the faculty member.

(2) If, after the hearing, the board decides to take action different from the recommendation of the faculty hearing committee and/or the chancellor, then before taking final action the board shall consult with the faculty hearing committee and/or the chancellor, as appropriate.

(3) If a faculty member whose dismissal is sought does not re-

quest a hearing pursuant to s. UWS 4.04 the board shall take appropriate action upon receipt of the statement of charges and the recommendation of the chancellor.

(4) For complaints involving sexual harassment, sexual assault, dating violence, domestic violence, or stalking, the faculty member and complainant shall be simultaneously notified of the board's final decision.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; **CR 15-061: am. (1), cr. (4) Register June 2016 No. 726, eff. 7-1-16.**

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 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.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; CR 06-078: am. Register May 2007 No. 617, eff. 7-1-07.

UWS 4.10 Date of dismissal. A decision by the board ordering dismissal shall specify the effective date of the dismissal.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.