

## 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 AMENDING RULES IN CHAPTER UWS 17, WISCONSIN ADMINISTRATIVE CODE, RELATING TO STUDENT NONACADEMIC DISCIPLINARY PROCEEDINGS (SS 071-18)

### ORDER

The Board of Regents of the University of Wisconsin System proposes to order the amendment of UWS 17.11 (2), (3), (4) (a) (intro.), 3. and 4. and 17.12 (1), (2), (3), and (4) (g); and the creation of UWS 17.10 (4), 17.11 (1g), and 17.11 (4) (c) (3), relating to student nonacademic disciplinary proceedings.

### ANALYSIS

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

**Explanation of Agency Statutory Rulemaking Authority:** The Board of Regents of the University of Wisconsin System's authority to promulgate the proposed rule is found in Wisconsin Statutes, Section 36.35, which states: "The board shall promulgate rules under ch. 227 governing student conduct and procedure for the administration of violations." Authority also is found in Wisconsin Statutes, Section 36.09(1), which states: "The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system."

**Plain Language Analysis:** The proposed rule amends Chapter UWS 17.10, Chapter UWS 17.11, and Chapter UWS 17.12 to state: (1) that a student who has twice been found responsible for misconduct that materially and substantially disrupted the free speech rights of others during the student's enrollment shall be suspended for a minimum of one semester; (2) that a student who has three times been found responsible for misconduct that materially and substantially disrupted the free speech rights of others during the student's enrollment shall be expelled; and (3) that a formal investigation and disciplinary hearing is required the second time a formal complaint alleges that a student has engaged in violent or other disorderly misconduct that materially and substantially disrupted the free expression of others.

The Board of Regents recognizes that incidents have occurred on its campuses where certain students have not respected the free speech rights of others and have disrupted events, including events involving outside, invited speakers. After reviewing the issue, the Board has determined that mandatory disciplinary penalties, in certain defined situations, are necessary to deter students from materially and substantially disrupting the free speech rights of others.

**Comparison with existing or proposed federal statutes or regulations:** The Federal Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities issued on March 21, 2019, and related Federal Department of Education proposed rules on First Amendment freedoms on college and university campuses announced on January 16, 2020, are tangentially related to the proposed changes to UWS 17.

**Comparison with rules in adjacent states:** Public universities in Illinois, Michigan, Iowa and Minnesota do not have administrative rules mandating student disciplinary penalties relating to disruption of free speech similar to those proposed in this rule.

**Statutes interpreted:** No information.

**Related statutes or rules:** No information.

**Summary of factual data and analytical methodologies:** No information.

**Analysis and supporting documents used to determine fiscal and economic impact and impact on small businesses in preparation of Fiscal Estimate and Economic Impact Analysis:** The “Public Notice: Request for Public Comments on the Economic Impact of Proposed Rules” for UWS 17 was published in the State Register and made available on the Board of Regents’ website at: <https://www.wisconsin.edu/regents/public-comment-form-chapter-uws-17-wis-admin-code/>. The notice remained open for 14 days from January 13, 2020, through January 27, 2020. No comments on the economic impact of the proposed rule were received.

**Fiscal Estimate, Economic Impact Analysis, and effect on small business:** The proposed rules do not have any economic or fiscal impact on specific businesses, on business sectors (including small businesses), or on the State of Wisconsin’s economy as a whole. The Fiscal Estimate and Economic Impact Analysis is attached.

**Public Comments:** The Board of Regents will accept written comments until March 12, 2020. Comments may be submitted: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form-chapter-uws-17-wis-admin-code/> or at [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov); (2) by email to [board@uwsa.edu](mailto:board@uwsa.edu); (3) at the public hearing scheduled from 9:00 a.m. to 11:00 a.m. on March 5, 2020 in the Sonata Room, Gordon Dining and Event Center, 770 W. Dayton Street, Madison, Wisconsin; or (4) by mail to Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

**Agency contact person:** Tomas L. Stafford, Senior System Legal Counsel; 608-265-5319; [tstafford@uwsa.edu](mailto:tstafford@uwsa.edu).

## TEXT OF RULE

**SECTION 1.** UWS 17.10 (4) is created to read:

**UWS 17.10 (4)** A student who has twice been found responsible for misconduct that materially and substantially disrupted the free speech rights of others at any time during the student’s enrollment shall be suspended for a minimum of one semester. A student who has thrice been found responsible for misconduct that materially and substantially disrupted the free speech rights of others at any time during the student’s enrollment shall be expelled.

**SECTION 2.** UWS 17.11 (1g) is created to read:

**UWS 17.11 (1g) MANDATORY INVESTIGATION AND HEARING.** The investigating officer shall conduct an investigation the second or subsequent time that a formal complaint alleges that a particular student, in an incident unrelated to any prior formal complaints against that student, has engaged in violent or other disorderly conduct that materially disrupted the free speech rights of others. The investigating officer shall provide an investigative report to the hearing examiner or hearing committee for a required hearing

under s. UWS 17.12 that may impose the disciplinary sanctions in s. UWS 17.10 (1) (i) and (j) and (4). For the purposes of this subsection, a formal complaint is a written complaint against a student filed with an institution alleging violent or other disorderly conduct that materially disrupted the free speech rights of others.

**SECTION 3.** UWS 17.11 (2), (3), (4) (a) (intro.), 3. and 4. are amended to read:

**UWS 17.11 (2) CONFERENCE WITH RESPONDENT.** When the investigating officer concludes that proceedings under this section are warranted, or proceedings are required under s. UWS 17.11 (1g), the investigating officer shall promptly contact the respondent in person, by telephone, or by electronic mail to offer to discuss the matter, review the investigating officer's basis for believing that the respondent engaged in nonacademic misconduct, or to review a formal complaint under s. UWS 17.11 (1g), and to afford the respondent an opportunity to respond. If the respondent fails to respond to the investigating officer, 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.

**(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 except when an investigative report and hearing are required under s. UWS 17.11 (1g). 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.

**(4) (a) (intro.)** If, as a result of a discussion under sub. (2) or review of available information, the investigating officer determines that nonacademic misconduct did occur and that one or more of the disciplinary sanctions listed under s. UWS 17.10 (1) should be recommended, or if the investigating officer determines that nonacademic misconduct did not occur, but the officer is required under s. UWS 17.11 (1g) to provide an investigative report, the investigating officer shall prepare a written report which shall contain all of the following:

3. Specification of the sanction sought, or if the investigating officer determined that nonacademic misconduct did not occur in a formal complaint processed under s. UWS 17.11 (1g), specification of why a sanction is not appropriate.

4. Notice of the respondent's right to a hearing or indication that a hearing is required under s. UWS 17.11 (1g).

**SECTION 4.** UWS 17.11 (4) (c) 3. is created to read:

**UWS 17.11 (4) (c) 3.** Where, under s. UWS 17.11 (1g), the disciplinary sanction sought or applicable to the respondent is provided for in s. UWS 17.10 (1) (i) and (j) and (4), 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.

**SECTION 5.** UWS 17.12 (1), (2), (3), and (4) (g) are amended to read:

**UWS 17.12 (1)** A respondent who requests a hearing, or for whom a hearing is scheduled under s. UWS 17.11 (4) (c) 2. or 3., 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 a hearing examiner or a hearing committee will hear the matter.

**(2)** If a 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. or 3., 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 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, or if the investigating officer in a complaint under s. UWS 17.11 (1g) made a determination that no misconduct occurred, a full explanation in writing of the facts upon which that determination was based, and shall provide the 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.

**(4) (g)** The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS 17.10 (1) (a) to (g) that differs from the recommendation of the investigating officer. Sanctions under s. UWS 17.10 (1) (h) to (j) may not be imposed unless previously recommended by the investigating officer, except in a complaint under s. UWS 17.11 (1g) that is subject to the sanctions in s. UWS 17.10 (1) (i) and (4).

**SECTION 6. EFFECTIVE DATE:** The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

**(END OF TEXT OF PROPOSED RULE)**