

## Chapter UWS 17

### STUDENT NONACADEMIC DISCIPLINARY PROCEDURES

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**Note:** See ch. [UWS 14](#) for student academic disciplinary procedures.

**Note:** Chapter UWS 17 as it existed on August 31, 1996 was repealed and a new chapter UWS 17 was created effective September 1, 1996. Chapter UWS 17 as it existed on August 31, 2009, was repealed and a new chapter UWS 17 was created effective September 1, 2009.

**UWS 17.01 Policy statement.** The missions of the University of Wisconsin System and its individual institutions can be realized only if the university's teaching, learning, research and service activities occur in living and learning environments that are safe and free from violence, harassment, fraud, theft, disruption and intimidation. In promoting such environments, the

university has a responsibility to address student nonacademic misconduct; this responsibility is separate from and independent of any civil or criminal action resulting from a student's conduct. This chapter defines nonacademic misconduct, provides university procedures for effectively addressing misconduct, and offers educational responses to misconduct. The University of Wisconsin System is committed to respecting students' constitutional rights. Nothing in this chapter is intended to restrict students' constitutional rights, including rights of freedom of speech or to peaceably assemble with others.

**UWS 17.02 Definitions.** In this chapter:

(1) "Chief administrative officer" means the chancellor of an institution or their designees.

(2) "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."

(2m) "Complainant" means any individual who is alleged to be the subject of sexual misconduct, as defined in s. [UWS 17.16](#).

(2g) "Consent" means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation in s. [UWS 17.16](#). A person is unable to give consent if the person is incapacitated because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

(3) "Days" means calendar days.

(4) "Delivered" means sent by electronic means to the student's official university email address and, in addition, provided by any of the following methods:

(a) Given personally.

(b) Placed in the student's official university mailbox.

(c) Mailed by regular first-class United States mail to the student's current address as maintained by the institution.

(5) "Disciplinary file" means the record maintained by the student affairs officer responsible for student discipline.

(6) "Disciplinary probation" means a status in which a student may remain enrolled in the university only upon the condition that the student complies with specified standards of conduct or other requirements or restrictions on privileges, for a specified period of time, not to exceed two years.

(7) "Disciplinary sanction" means any action listed in s. [UWS 17.10 \(1\)](#) taken in response to student nonacademic misconduct.

(7m) “Education program or activity” includes, for purposes of Title IX misconduct only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.(8) “Expulsion” means termination of student status with resultant loss of all student rights and privileges.

**(8m)** “Formal complaint” is, for the purpose of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking and requesting that the institution investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

**(9)** “Hearing examiner” means an individual, other than the investigating officer, appointed by the chief administrative officer in accordance with s. [UWS 17.06 \(2\)](#) for the purpose of conducting a hearing under s. [UWS 17.12](#) or [UWS 17.18](#).

**(9m)** “Incapacitation” means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person’s decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

**(10)** “Institution” means any university, or an organizational equivalent designated by the board.

**(11)** “Investigating officer” means an individual, or their designee, appointed by the chief administrative officer of each institution, to conduct investigations of nonacademic misconduct under this chapter.

**(12)** “Nonacademic misconduct hearing committee” or “committee” means the committee appointed pursuant to s. [UWS 17.07](#) to conduct hearings under s. [UWS 17.12](#) or [UWS 17.18](#).

**(12m)** “Party” refers to a respondent and/or complainant involved in a disciplinary procedure under s. [UWS 17..](#)

**(13)** “Preponderance of the evidence” means information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than “clear and convincing evidence” and is the minimum standard for a finding of responsibility under this chapter.

(13m) "Respondent," means any student who was registered for study in an institution for the academic period, or between academic periods for continuing students, when the misconduct occurred and has been reported to have violated UWS 17.09 or UWS 17.16 (14) "Student" means any person who is registered for study in an institution for the academic period in which the misconduct occurred, or between academic periods, for continuing students.

(15) "Student affairs officer" means the dean of students or student affairs officer or other personnel designated by the chief administrative officer to coordinate disciplinary hearings and carry out duties described in this chapter.

(16) "Suspension" means a loss of student status for a specified length of time, not to exceed two years, with resultant loss of all student rights and privileges.

(17) "University lands" means all real property owned by, leased by, or otherwise subject to the control of the Board of Regents of the University of Wisconsin System.

**UWS 17.03 Consistent institutional policies.** Each institution is authorized to adopt policies consistent with this chapter. A copy of such policies shall be filed with the Board of Regents and the University of Wisconsin System office of academic affairs.

**UWS 17.04 Notice to students.** Each institution shall publish ch. UWS 17 on its website and shall make ch. UWS 17 and any institutional policies implementing ch. UWS 17 freely available to students through the website or other means.

**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 ss. UWS 17.11 and UWS 17.17. For allegations involving sexual misconduct, as defined in s. UWS 17.16, the Title IX Coordinator or designee shall serve as the investigating officer.

**UWS 17.06 Nonacademic misconduct hearing examiner.**

(1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the designation of a student nonacademic misconduct hearing examiner to fulfill the responsibilities of the nonacademic misconduct hearing examiner in this chapter.

(2) A hearing examiner shall be selected by the chief administrative officer pursuant to the policies adopted under sub. (1).

**UWS 17.07 Nonacademic misconduct hearing committee.**

(1) The chief administrative officer of each institution, in consultation with faculty, academic staff, and student representatives, shall adopt policies providing for the establishment of a student nonacademic misconduct hearing committee to fulfill the responsibilities of the nonacademic misconduct hearing committee in this chapter.

(2) A student nonacademic misconduct hearing committee shall consist of at least three persons, including at least one student, except that no such committee shall be constituted with a majority of members who are students. The presiding officer, who may be the hearing examiner designated pursuant to s. UWS 17.06, shall be appointed by the chief administrative officer. The presiding officer and at least one other member shall constitute a quorum at any hearing held pursuant to due notice.

**UWS 17.08 Nonacademic misconduct occurring on or outside of university lands.**

(1) MISCONDUCT ON UNIVERSITY LANDS. Except as provided in s. UWS 17.08 (2), the provisions contained in this chapter shall apply to the student conduct described in ss. UWS 17.09 and UWS 17.16 that occurs on university lands or at university-sponsored events.

(2) MISCONDUCT OUTSIDE OF UNIVERSITY LANDS. The provisions contained in this chapter may apply to the student conduct described in ss. UWS 17.09 and UWS 17.16 that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer shall consider whether the conduct meets one or more of the following conditions:

- (a) The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.
- (b) The conduct indicates that the student presented or may present a danger or threat to the health or safety of themselves or others.
- (c) The conduct demonstrates a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions.

**UWS 17.09 Conduct subject to disciplinary action.** In accordance with s. UWS 17.08, the university may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct. Conduct defined in s. UWS 17.09 will use the disciplinary procedure, hearing, appeal and settlement processes detailed in ss. UWS 17.11 to 17.15. However, at the university's discretion, conduct defined in s. UWS 17.09, when arising out of the same facts and circumstances as sexual misconduct defined in s. 17.16, may be consolidated with such charges and addressed with the sexual misconduct disciplinary procedure, hearing, appeal, and settlement processes detailed in UWS 17.17-17.21.

- (1) DANGEROUS CONDUCT. Conduct that endangers or threatens the health or safety of oneself or another person.
- (2) HARASSMENT. Conduct defined in s. 947.013, Stats.
- (3) HAZING. Conduct defined in s. 948.51, Stats.
- (4) ILLEGAL USE, POSSESSION, MANUFACTURE, OR DISTRIBUTION OF ALCOHOL OR CONTROLLED SUBSTANCES. Use, possession, manufacture, or distribution of alcoholic

beverages or of marijuana, narcotics, or other controlled substances, except as expressly permitted by law or university policy.

**(5) UNAUTHORIZED USE OF OR DAMAGE TO PROPERTY.** Unauthorized possession of, use of, moving of, tampering with, damage to, or destruction of university property or the property of others.

**(6) DISRUPTION OF UNIVERSITY-AUTHORIZED ACTIVITIES.** Conduct that obstructs or impairs university-run or university-authorized activities, or that interferes with or impedes the ability of a person to participate in university-run or university-authorized activities.

**(7) FORGERY OR FALSIFICATION.** Unauthorized possession of or fraudulent creation, alteration, or misuse of any university or other governmental document, record, key, electronic device, or identification.

**(8) MISUSE OF COMPUTING RESOURCES.** Conduct that involves any of the following:

**(a)** Failure to comply with laws, license agreements, and contracts governing university computer network, software, and hardware use.

**(b)** Use of university computing resources for unauthorized commercial purposes or personal gain.

**(c)** Failure to protect a personal password or university-authorized account.

**(d)** Breach of computer security, invasion of privacy, or unauthorized access to university computing resources.

**(9) FALSE STATEMENT OR REFUSAL TO COMPLY REGARDING A UNIVERSITY MATTER.** Making a knowingly false oral or written statement to any university employee or agent of the university regarding a university matter, or refusal to comply with a reasonable request on a university matter.

**(10) VIOLATION OF CRIMINAL LAW.** Conduct that constitutes a criminal offense as defined by state or federal law.

**(11) SERIOUS AND REPEATED VIOLATIONS OF MUNICIPAL LAW.** Serious and repeated off-campus violations of municipal law.

**(12) VIOLATION OF CH. UWS 18.** Conduct that violates ch. [UWS 18](#), including, but not limited to, provisions regulating fire safety, theft, and dangerous weapons.

**(13) VIOLATION OF UNIVERSITY RULES.** Conduct that violates any published university rules, regulations, or policies, including provisions contained in university contracts with students.

**(14) NONCOMPLIANCE WITH DISCIPLINARY SANCTIONS.** Conduct that violates a sanction, requirement, or restriction imposed in connection with previous disciplinary action.

**(15) Retaliation.** Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in UWS 17.17-17.21, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under s. UWS 17.17-17.21.

#### **UWS 17.10 Disciplinary sanctions.**

**(1)** The disciplinary sanctions that may be imposed for nonacademic misconduct, in accordance with the procedures of ss. [UWS 17.11 to 17.13](#), and [17.17 to 17.19](#) are any of the following:

- (a)** A written reprimand.
- (b)** Denial of specified university privileges.
- (c)** Payment of restitution.
- (d)** Educational or service sanctions, including community service.
- (e)** Disciplinary probation.
- (f)** Imposition of reasonable terms and conditions on continued student status.
- (g)** Removal from a course in progress.
- (h)** Enrollment restrictions on a course or program.
- (i)** Suspension.
- (j)** Expulsion.

**(2)** One or more of the disciplinary sanctions listed in sub. **(1)** may be imposed for an incident of nonacademic misconduct.

**(3)** Disciplinary sanctions shall not include the termination or revocation of student financial aid; however, this shall not be interpreted as precluding the individual operation of rules or standards governing eligibility for student financial aid under which the imposition of a disciplinary sanction could result in disqualification of a student for financial aid.

#### **UWS 17.11 Disciplinary procedure.**

**(1) PROCESS.** The investigating officer may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. [UWS 17.10 \(1\)](#) for conduct defined in s. [UWS 17.09](#).

**(2) CONFERENCE WITH RESPONDENT.** When the investigating officer concludes that proceedings under this section are warranted, 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, 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.

**(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 notify the respondent.

**(4) PROCESS FOLLOWING DETERMINATION BY THE INVESTIGATING OFFICER THAT NONACADEMIC MISCONDUCT OCCURRED.**

**(a)** 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, the investigating officer shall prepare a written report which shall contain all of the following:

1. A description of the alleged misconduct.
2. A description of all information available to the university regarding the alleged misconduct.
3. Specification of the sanction sought.
4. Notice of the respondent's right to a hearing.
5. A copy of this chapter and of the institutional procedures adopted to implement this section.

**(b)** The written report shall be delivered to the respondent.

**(c)** A 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.

1. Where the disciplinary sanction sought is one of those listed in s. [UWS 17.10 \(1\) \(a\) to \(g\)](#), and if the respondent desires a hearing, the 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 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 respondent waives, in writing, the right to such a hearing.

**UWS 17.12 Hearing.**

**(1)** A respondent who requests a hearing, or for whom a hearing is scheduled under s. [UWS 17.11 \(4\) \(c\) 2.](#) for conduct defined in s. [UWS 17.09](#), shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

(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., 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, and shall provide the respondent 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) The hearing shall be conducted in accordance with the following guidance and requirements:

(a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in ch. UWS 17.

(b) The respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on their own behalf, and the right to be accompanied by an advisor of the 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 respondent but may not directly question adverse witnesses, present information or witnesses, or speak on behalf of the 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 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 respondent. In accordance with the educational purposes of the hearing, the respondent is expected to respond on their own behalf to questions asked of them during the hearing.

(c) The hearing examiner or committee:

1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.

2. Shall observe recognized legal privileges.

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 respondent is allowed to effectively question the witness.

(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 may access the record, except as may be precluded by applicable state or federal law.

(e) The hearing examiner or committee shall prepare written findings of fact and a written statement of its decision based upon the record of the hearing.

(f) A hearing examiner's or committee's finding of nonacademic misconduct shall be based on one of the following:

1. Clear and convincing evidence, when the sanction to be imposed is one of those listed in s. [UWS 17.10 \(1\) \(h\) to \(j\)](#).

2. A preponderance of the evidence, when the sanction to be imposed is one of those listed in s. [UWS 17.10 \(1\) \(a\) to \(g\)](#).

(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.

(h) The hearing shall be conducted by the hearing examiner or committee, and the university's case against the respondent shall be presented by the investigating officer or their designee.

(i) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered to the respondent, 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 the respondent fails to appear at a scheduled hearing and to proceed, the hearing examiner or committee may 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 respondent 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.

### **UWS 17.13 Appeal to the chancellor.**

(1) For conduct defined in s. [UWS 17.09](#), 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 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.

(2) 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.

(c) The decision was based on factors proscribed by state or federal law.

(3) If the chief administrative officers makes a finding under sub. (2), they may return the matter for consideration, or may invoke an appropriate remedy of their own. The chief administrative officer's decision shall be communicated to the respondent.

**UWS 17.14 Discretionary appeal to the Board of Regents.** For conduct defined in s. UWS 17.09, 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 respondent within 14 days of the final institutional decision.

**UWS 17.15 Settlement.** For conduct defined in s. UWS 17.09, the procedures set forth in this chapter allow the university and a 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 respondent and the investigating officer or student affairs officer. The case is concluded when a copy of the signed agreement is delivered to the respondent.

**UWS 17.16 Sexual Misconduct subject to disciplinary action.** In accordance with s. UWS 17.08, the university may discipline a student for engaging in, attempting to engage in, or assisting others to engage in any of the following types of nonacademic misconduct. Conduct as defined in s. UWS 17.16 (“sexual misconduct”) will use the disciplinary procedure, hearing, appeal and settlement processes detailed in ss. UWS 17.17 to 17.21.

- (1) **SEXUAL HARASSMENT.** When on the basis of sex, unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that when using the legal “reasonable person” standard:
  1. Is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity; or
  2. Is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual’s academic or work performance or participation in institution sponsored or supported activity, or creates an intimidating, hostile, or offensive academic, working, or program or activity related environment.
- (2) **SEXUAL ASSAULT.** An offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. 20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).
  - (a) **Rape:** The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.

- (b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
  - (c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
  - (d) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent (See s. 948.02, Stats.)
- (3) Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (4) DOMESTIC VIOLENCE. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a persons who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Wisconsin. (See ss. 813.12(1)(am) and 968.075)
- (5) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.
- (6) SEXUAL EXPLOITATION. Occurs when an individual attempts, takes, or threatens to take nonconsensual sexual advantage of another person. Examples include, but are not limited to:
  - (a) Without the knowledge and consent of all participants –
    1. observing, recording, or photographing private body parts or sexual activity of one or more complainants;
    2. allowing another person to observe, record, or photograph sexual activity or private body parts of one or more complainants; or
    3. otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of one or more complainants;
  - (b) Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing another person to do the same.

- (c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity;
- (d) Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity;
- (e) Coercing the complainant to engage in sexual activity for money or anything of value;
- (f) Threatening distribution of the following, to coerce the complainant into sexual activity or providing money or anything of value:
  - 1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more complainants, or
  - 2. Other information of a sexual nature (for example, may include but is not limited to, sexual history or sexual orientation).

### **UWS 17.17 Sexual misconduct disciplinary procedure.**

**(1) PROCESS.** The investigating officer(s) may proceed in accordance with this section to impose, subject to hearing and appeal rights, one or more of the disciplinary sanctions listed in s. UWS 17.10 (1), for sexual misconduct defined in s. UWS 17.16, and conduct described in s. UWS 17.09 when consolidated with sexual misconduct charges pursuant to this section and consistent with s. UWS 17.08

**(a)** As required by 34 CFR Part 106, a sexual misconduct disciplinary procedure will also be considered “Title IX misconduct” and require associated process when all of the following requirements are met:

- 1. A “formal complaint,” as defined in 17.02(8m) is either filed by a complainant or signed by the Title IX Coordinator.
- 2. The alleged conduct is on the basis of sex and meets the definitions of sexual harassment as defined in s. UWS 17.16(a) or sexual assault, dating violence, domestic violence, or stalking as defined in s. UWS 17.16 (2-5).
- 3. The alleged conduct occurred within a university “education program or activity” as defined in s. UWS 17.02(7m).
- 4. The alleged conduct occurred against the complainant while in the United States.
- 5. The complainant is participating in or attempting to participate in the university’s education program or activity at the time they file the complaint; and

**(b)** The university will dismiss a complaint of Title IX misconduct that does not meet all the requirements of s. sub. (1)(a)(1-5).

**(c)** The university may dismiss a complaint of Title IX misconduct if at any time during the disciplinary procedure or hearing:

1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled by the university; or
3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

**(d)** Upon dismissal of a complaint of Title IX misconduct, the university will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the complainant and respondent.

**(e)** Dismissal of a complaint of Title IX misconduct does not preclude other university action under ch. UWS 17.

**(f)** The university may consolidate disciplinary procedures as to allegations of sexual misconduct, as defined in s. UWS 17.16, against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual misconduct arise out of the same facts or circumstances.

**(g)** In consultation with the complainant, the university may choose to address allegations of non-Title IX sexual misconduct with non-disciplinary measures outside the procedures of s. UWS 17. Non-disciplinary measures may include supportive measures and protective measures for complainant, which may or may not involve the respondent.

**(2) NOTICE OF INVESTIGATION.** When the investigating officer concludes that proceedings under this section are warranted, the investigating officer shall promptly distribute a written Notice of Investigation in person, by telephone or by electronic mail, to the complainant and respondent. The Notice of Investigation will include:

- i. Details known at the time of issuing notice, including:
  1. The identities of the complainant and respondent involved in the incident, if known;
  2. The conduct allegedly constituting sexual misconduct; and
  3. The date and location of alleged incident, if known
- ii. Notice to the complainant and respondent that they may have an advisor of their choice, who may be an attorney
- iii. Notice to the complainant and respondent that they may inspect and review evidence collected during the investigation
- iv. Notice of s. UWS 17.09(9), false statement or refusal to comply regarding a university matter.

**(e)** Notice that the respondent is presumed not responsible for the alleged sexual misconduct until a determination regarding responsibility is made at the conclusion of the disciplinary procedure.

**(f)** Notice if the sexual misconduct allegations also involves Title IX misconduct.

- (g) Information about the nonacademic misconduct process available in ch. UWS 17 and about any available informal resolution process.
- (h) If, during the course of an investigation, the university decides to investigate allegations that are not included in the Notice of Investigation, the university shall send an amended Notice of Investigation with additional allegations.

**(3) INVESTIGATION.** During the investigation, the investigating officer will:

- (a) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (b) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (c) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- (d) Provide, to anyone whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the person to prepare to participate;
- (e) Not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a grievance process under this section.

**(4) REVIEW OF EVIDENCE.** Prior to completion of the final investigative report (s. UWS 17.17(5)), the university shall provide the complainant and respondent and their advisors, if any, the evidence gathered during the university's investigation that is directly related to the allegations of sexual misconduct in an electronic format or hard copy.

(a) The evidence subject to review includes information upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

(b) The complainant and respondent will be afforded at least 10 days to submit a written response to the evidence, which the investigator will consider prior to completion of the final investigative report.

**(5) FINAL INVESTIGATIVE REPORT.** The investigator will create an investigative report that fairly summarizes relevant evidence.

(a) The final investigative report shall be delivered simultaneously to the respondent and complainant and their advisors, if any, for their review and response at least 10 days prior to a hearing.

(b) The final investigative report may contain recommended determinations as to whether sexual misconduct occurred and specification of any sanction(s) recommended.

(c) After receipt of the final investigative report, the complainant and respondent have the right to a hearing under s. UWS 17.18 for a formal determination as to whether sexual misconduct occurred, potential disciplinary sanctions, or both.

(d) Upon distribution of the final investigative report to the complainant and respondent, the university will proceed under s. UWS 17.18 to schedule a hearing on the matter. A hearing shall be conducted unless the complainant and respondent waive, in writing, the right to such a hearing or otherwise voluntarily choose to proceed with a settlement agreement (or informal resolution) under s. UWS 17.21.

#### **UWS 17.18 Hearing (Sexual Misconduct).**

(1) The university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.

(2) The university shall take the necessary steps to convene the hearing and shall schedule it within 15 days of the distribution of the final investigative report. The hearing shall be conducted within 45 days of the distribution of the final investigative report, unless a different time period is mutually agreed upon by the complainant, respondent and university or is ordered or permitted by the hearing examiner or committee.

(3) No less than 10 days in advance of the hearing, the hearing examiner or committee shall obtain from the investigating officer, in writing, the final investigative report and any additional available information of the type described in s. UWS 17.17(4).

(4) The hearing shall be conducted in accordance with the following guidance and requirements:

(a) The hearing process shall further the educational purposes and reflect the university context of nonacademic misconduct proceedings. The process need not conform to state or federal rules of criminal or civil procedure, except as expressly provided in ch. UWS 17.

(b) Both the complainant and respondent shall have the right to question adverse witnesses, the right to present information and witnesses, the right to be heard on their own behalf, and the right to be accompanied by an advisor of their choice. The advisor may be a lawyer. In accordance with the educational purposes of the hearing, the complainant and respondent are expected to respond on their own behalf to questions asked of them during the hearing.

(c) The hearing examiner or committee:

1. Shall admit information that has reasonable value in proving the facts, but may exclude immaterial, irrelevant, or unduly repetitious testimony.

**2.** Shall not permit questions and evidence about the complainant's sexual predisposition or prior sexual behavior unless:

- i. Such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- ii. If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

**3.** Shall observe recognized legal privileges including, but not limited to, those described in s. UWS 17.17(3)(e).

- 2) 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 advisors for the complainant and respondent are allowed to effectively question the party or witness.

**(5)** Cross examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

- i. If a party does not have an advisor at the hearing to conduct cross-examination, the university will provide someone, without fee or charge, who may or may not be an attorney, to conduct cross-examination.
- ii. Before a party or witness answers a cross-examination or other question, the hearing examiner or committee must first determine whether a question is relevant or not and explain any decision to exclude those questions as not relevant.
- iii. The hearing examiner or committee cannot draw an inference regarding responsibility based solely on a party's or a witness's absence from the hearing or refusal to answer cross-examination questions
- iv. At hearings involving Title IX misconduct, if a party or a witness does not submit to cross-examination at the hearing, then the hearing examiner or committee must not rely on any statement of that party or witness made prior to or during the hearing in reaching a determination regarding responsibility.

**(6)** If a party fails to appear at a scheduled hearing and to proceed, the hearing examiner or committee may issue a decision based upon the information provided except as described in sub (5)(iv).

**(7)** 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 all evidence presented at the hearing. The respondent and the complainant may access the record, except as may be precluded by applicable state or federal law.

(8) The hearing examiner or committee shall prepare written findings of fact and a written statement of its decision based upon the record of the hearing, using the preponderance of the evidence standard. The written report will include:

- (a) Identification of the allegations potentially constituting sexual misconduct
- (b) A description of the procedural steps taken from the receipt of the initial complaint through the determination, including any notifications to the complainant and respondent, interviews with the complainant and respondent and witnesses, site visits, methods used to gather other evidence, and hearings held.
- (c) Findings of fact supporting the determination.
- (d) Conclusions regarding the application of ch. UWS 17 to the facts.
- (e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility under s. UWS 17 and any Title IX misconduct, any disciplinary sanctions the university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided by the university to the complainant.
- (f) The hearing examiner or committee may impose one or more of the disciplinary sanctions listed in s. UWS 17.10 (1) (a) to (j).
- (g) Procedures and permissible bases for the complainant and respondent to appeal.

(9) The decision of the hearing examiner or committee shall be prepared within 14 days of the hearing, and delivered simultaneously to the respondent and the complainant, excluding information that may be precluded by state or federal law. The decision regarding responsibility becomes final either on the date that the university provides the complainant and respondent with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely..

(10) Disciplinary hearings are subject to the Wisconsin open meetings law and may be closed if the 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.

#### **UWS 17.19 Appeal to the chancellor (Sexual Misconduct).**

(1) The respondent or complainant may appeal in writing to the chief administrative officer within 14 days of the date of the written decision for a review, based on the record, of the following:

- (a) A dismissal of Title IX misconduct.
- (b) The written decision of the hearing examiner or committee.

(2) The chief administrative officer has 30 days from receipt of an appeal to respond in writing simultaneously to both the complainant and respondent 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) A procedural irregularity affected the outcome of the matter
- (c) The decision was based on factors proscribed by state or federal law.
- (d) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
- (e) The Title IX Coordinator, investigator, hearing examiner, or a member of the hearing committee had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(3) If the chief administrative officer makes a finding under sub. (2), the chief administrative officer may return the matter for consideration, or may invoke an appropriate remedy of their own. The chief administrative officer's written decision describing the result of the appeal and the rationale for the result shall be communicated simultaneously to the respondent and complainant.

(4) When an appeal is filed, the chief administrative officer will notify the other party in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

**UWS 17.21 Settlement (Sexual Misconduct).** The procedures set forth in this chapter allow the university, the respondent, and the complainant to voluntarily enter into a settlement agreement (or informal resolution) regarding the alleged misconduct, any time after the Notice of Investigation has been distributed the complainant and respondent and prior to any final determination regarding responsibility. Any such agreement and its terms shall be in writing and signed by both the complainant and respondent and the Title IX Coordinator or designee. If there is no identified complainant or the complainant has declined participation in the disciplinary procedure, or when Title IX misconduct is involved and the complainant has withdrawn the formal complaint, the agreement and its terms may be signed by only the respondent and Title IX Coordinator or designee. The case is concluded when a copy of the signed agreement is delivered to the complainant and respondent. At any time prior to agreeing to a resolution, either party has the right to withdraw from the settlement process and resume the process under s. UWS 17.17 to 17.20.

**UWS 17.20 Discretionary appeal to the Board of Regents (Sexual Misconduct).** University decisions under ss. UWS 17.17 to 17.19 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 university decision. If the board of regents grants a review upon the record, it will:

(1) Notify the other party in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

(2) Issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent.

**UWS 17.22 Effect of discipline within the institution.** A 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](#) or [UWS 17.17](#) shall not be awarded a degree during the pendency of the sanction or disciplinary proceeding.

**UWS 17.23 Effect of suspension or expulsion within the university system.**

(1) Suspension or expulsion shall be systemwide in effect and shall be noted on an individual's transcript, with suspension noted only for the duration of the suspension period.

(2) 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 17.24](#).

(3) 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 17.24](#).

(4) 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 individual who is academically eligible may re-enroll in the institution which suspended them, provided all conditions from previous disciplinary sanctions have been met.

**UWS 17.24 Petition for restoration of rights after suspension or expulsion.** A respondent who has been suspended may petition to have their student status, rights, and privileges restored before the suspension has expired by its own terms under s. [UWS 17.23 \(2\)](#). A 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 respondent was suspended or expelled or is seeking admission (if applying to a different UW school). The chief administrative officer shall make the readmission decision. In cases of sexual misconduct, 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, and should be provided opportunity to respond regarding any review of responsibility findings.

**UWS 17.25 Emergency suspension.**

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

(2) The chief administrative officer of each institution may impose an emergency suspension on a respondent when all of the following conditions are met

(a) The investigating officer has made a reasonable attempt to offer the respondent the opportunity for discussion, either in person or by telephone.

(b) The investigating officer recommends a sanction of suspension or expulsion.

(c) The chief administrative officer concludes, based on the available information, that the misconduct occurred and that the respondent's continued presence on campus meets one or more of the following conditions:

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

2. Would constitute a potential for serious harm to others.

3. Would pose a threat of serious disruption of university-run or university-authorized activities.

4. Would constitute a potential for serious damage to university facilities or property.

(d) In cases of sexual misconduct as defined in s. UWS 17.16, the chief administrative officer has made reasonable attempts to consult with the complainant and offer protective measures.

(3) If the chief administrative officer determines that an emergency suspension is warranted under sub. (2), the chief administrative officer shall promptly have written notification of the emergency suspension delivered to the respondent. In cases of sexual misconduct as defined in s. UWS 17.16, 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 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 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](#) or [17.18](#) 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 respondent agrees to a longer period.

(6) If the chief administrative officer determines that none of the conditions specified in sub. (2) (c) are present, but that misconduct may have occurred, the case shall proceed in accordance with s. UWS 17.12 or UWS 17.18, as applicable.