

FACULTY LEGISLATION

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AFFIRMATIVE ACTION RESOLUTION OF THE FACULTY

The Faculty Senate hereby declares its support for vigorous implementation of the university's program of affirmative action in hiring women and members of minority groups. We therefore recommend:

1. That departmental faculties use all appropriate avenues and procedures to seek qualified women and minority faculty members. This should include listing positions in national professional journals and with appropriate agencies, and giving the same consideration to applicants identified through these means as is given to those identified through more traditional means.
2. That deans and other administrators, before approving new appointments, ascertain whether the departments involved have made appropriate efforts to recruit qualified women and minority group faculty members.
3. That where departments having few women or minority members have identified women or minority candidates for faculty appointments, additional budget support, where necessary, be provided to facilitate such appointments.
4. That departments encourage qualified undergraduate women and minority students to attend graduate school, and that particular efforts be made to provide such financial assistance as is necessary to make graduate study feasible for these students, who will be a future source of university faculty members.

[UW-Madison Faculty Senate Minutes, 1 April 1974.]

NONDISCRIMINATION AND AFFIRMATIVE ACTION IN FACULTY EMPLOYMENT

1. That funds be available beyond normal allocations to bring women or minority candidates to the campus for employment interviews.
2. That deans withhold approval of any tenure-track appointment not accompanied by specific evidence of a search in which every reasonable effort was made to identify and interest qualified women or minority candidates, and that such evidence be forwarded to the chancellor whenever a dean recommends a tenure-track appointment.
3. That departments be given encouragement and resources to make positions at Wisconsin attractive to particularly well-qualified women or minority candidates, especially when they meet a particular need of the department.

[UW-Madison Faculty Document 257 and Faculty Senate Minutes, 13 September 1976.]

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NONDISCRIMINATION RESOLUTIONS OF THE FACULTY

It is the sense of the Faculty Senate that all policies on nondiscrimination in effect at UW-Madison should include sexual preference as one of the bases on which discrimination is prohibited.

[UW-Madison Faculty Senate Minutes, 7 May 1979.]

The Faculty Senate condemns the practice of age discrimination. It is the sense of the Faculty Senate that all policies on nondiscrimination in effect at UW-Madison must include age as one of the bases on which discrimination is prohibited.

[UW-Madison Faculty Senate Minutes, 1 May 1989.]

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NONDISCRIMINATION POLICY OF THE ATHLETIC BOARD

1. It is the policy of the Athletic Board to make intercollegiate athletic competition, facilities, administrative resources, coaching, and ancillary personnel available to all qualified undergraduate students without regard to race, creed, religion, national origin, or sex in a manner consistent with law and the needs and interests of the student body and the university. It is recognized that in some sports combining men and women on the same team would virtually eliminate women competitors and that the sponsoring of separate teams would foster additional opportunities for competition. Therefore, this policy is not intended to mandate abolition of "men's" and "women's" teams but to permit either integrated or separate programs for men and for women where desirable because of competitive opportunities, conference rules, and the like.
2. Employment in any position in the Division of Intercollegiate Athletics must be in accordance with the principles and practices established by the government of the United States and the State of Wisconsin for affirmative action.
3. Whenever a Wisconsin team plays the team of another institution in any athletic event, the members of the Wisconsin team shall be permitted to travel together, lodge and dine together, and play together as a team without discriminating against any member of the team regardless of the policy of the institution, or of local or state laws, or of local customs or practices. This declaration of policy shall be included in all contracts executed to play other institutions, and shall be a condition upon which the contract is entered into. Inability to comply with this anti-discrimination policy after a contract to play has been signed shall result in cancellation of the game or contest.

[UW-Madison Faculty Document 164, 5 November 1973.]

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PROHIBITED HARASSMENT: DEFINITIONS AND RULES GOVERNING
THE CONDUCT OF UW-MADISON FACULTY AND ACADEMIC STAFF

Part I: Sexual Favors as a Basis for Actions Affecting an Individual's Welfare as a Student or Employee

A member of the university faculty or academic staff is subject to discipline if he or she behaves, while engaged in official university business, toward another university employee, student, or recipient of university services in any of the following ways:

- A. Uses, offers to use, or threatens to use one's status as a member of the university faculty or academic staff to bring about decisions or assessments affecting an individual's welfare on the basis of submission to, or rejection of, requests for sexual favors.
- B. Accepts an offer of sexual favors in exchange for an agreement to use one's status as a member of the university faculty or academic staff to bring about favorable decisions or assessments affecting an individual.

Part II: Flagrant or Repeated Sexual Advances, Requests for Sexual Favors, and Physical Contacts Harmful to Another's Work or Study Performance or to the Work, Study, or Service Environment

A member of the university faculty or academic staff is subject to discipline if, in a work or learning-related setting, he or she makes sexual advances, requests sexual favors, or makes physical contacts commonly understood to be of a sexual nature, and if

1. the conduct is unwanted by the person(s) to whom it is directed, and
2. the actor knew or a reasonable person could clearly have understood that the conduct was unwanted, and
3. because of its flagrant or repetitious nature, the conduct either
 - a. seriously interferes with work or learning performance of the person(s) to whom the conduct was directed, or
 - b. makes the university work, learning, or service environment intimidating or hostile, or demeaning to a person of average sensibilities.

Part III. Expression in Instructional Settings

The University of Wisconsin-Madison endeavors to maintain an environment that challenges students, faculty, and staff to develop their critical thinking capacities to their fullest potential—an environment in which controversial, provocative, and unpopular ideas can safely be introduced and discussed. The university is, therefore, unswervingly committed to freedom of speech as guaranteed under the First Amendment to the Constitution of the United States and to the principle of academic freedom adopted by the Board of Regents in 1894, which states in part: “whatever may be the limitations which trammel inquiry elsewhere, we believe that the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone truth can be found.”

Beneficial to students, academic staff and professors alike, academic freedom has special application to the classroom and has been described by U.S. Supreme Court Justice William Brennan as “...of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom....The classroom is peculiarly the marketplace of ideas.”

Adherence to the right of freedom of speech and to the principle of academic freedom requires that all thoughts presented as ideas or the advocacy of ideas in instructional settings, if they are germane to the subject matter of the course being taught, must be protected. This applies to the ideas of faculty and students alike. The maintenance of intellectual freedom through the open expression of ideas will sometimes be unavoidably hurtful. Some hurtful expressions, however, play no meaningful role in the free exchange of ideas; they may, indeed, inhibit that exchange, thereby denying some individuals full participation in the learning experience. These expressions are those that clearly derogate and debase a student or students in the class on the basis of gender, race, religion, ethnicity, sexual orientation, or disability.

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Within the framework of academic freedom, the faculty and academic staff have a responsibility to foster an environment of tolerance, civility, awareness, and respect. The university community can thrive and serve its members equally only when the community recognizes the inherent worth and dignity of every human being and affirms the principle of mutual respect as an integral aspect of the pursuit of knowledge. The integrity of the University of Wisconsin-Madison rests upon its ability to guarantee freedom from intimidation or injury generated by intolerance or harassment. The freedom of all members of the university to express openly their ideas and opinions, however, must be maintained.

Accordingly, all expression germane to the instructional setting--including but not limited to information, the presentation or advocacy of ideas, assignment of course materials, and teaching techniques--is protected from disciplinary action.

A student who finds that an instructor uses expressions that are hurtful to him or her is strongly urged to discuss these concerns with the instructor. If for some reason this is not possible, or does not produce results the student finds satisfactory, he or she is urged to contact his or her advisor, the instructor's department chair, or the Dean of Students, for mediation between the student and the academic staff or faculty member. If the student still believes the expressions were not germane to the instructional setting, he or she is referred to *Faculty Policies and Procedures* Chapter 9 or *Academic Staff Policies and Procedures* Chapter 6.

Part IV. Protected and Unprotected Expression in Non-Instructional but Work-Related Settings

Faculty and academic staff are subject to discipline for using derogating and debasing expression in a non-instructional but work-related setting according to the following definitions and rules.

A. Definitions

1. "Expression" is communication in any format—including but not limited to oral, visual, literary, recorded, or symbolic. Expression includes the presentation of factual information and opinion, and the advocacy of ideas.
2. A "non-instructional but work-related setting" is any situation except those described in Definition 3 below in which a member of the faculty or academic staff, while engaged in a university-related task, communicates with students, university employees or recipients of university services. Non-instructional but work-related settings include, but are not limited to, such situations as discussion about what graduate school a student might attend or what career options a student might pursue, or comments to a staff member in the Department office.
3. An "instructional setting" is any situation in which the instructor of a course communicates about course content with one or more students enrolled in the course, or in which an instructor who has partial responsibility for communicating course content but is not the individual delegated with particular authority to record student grades communicates with the student(s) about the course content (e.g., as a member of a thesis committee; as a lecturer in a team-taught course), or in which an instructor, acting as an advisor, discusses courses taught by other instructors. Instructional settings include, but are not limited to, lecture halls, seminar rooms, laboratories, field trips, and instructors' offices. Instructional settings do not include public lectures where attendance by students is not required, published scholarship, commentary advanced in or reported via any public medium, and the like.

B. Protected and Unprotected Expression

1. Expression is protected if it involves the presentation or discussion of any material that is appropriate to non-instructional but work-related activities.

The use, in addressing a specific student, university employee, or recipient of university services, of an epithet or a comment concerning that student, employee or recipient of services that clearly derogates and debases him or her on the basis of his or her gender, race, religion, ethnicity, sexual orientation, or disability is not appropriate and therefore is not protected.

2. Expression can be the basis for discipline only if all of the following conditions apply:
 - a. The expression is clearly and patently not protected under IV.B.1; and
 - b. one or more student(s), university employee(s), or recipient(s) of university services have asked on one or more previous occasions that the faculty or academic staff member stop using such expression; and

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- c. the expression is, and is commonly considered by the university community—including individuals who belong to a group targeted by the faculty or academic staff member—to be, seriously derogating and debasing; and
- d. the expression is likely seriously to interfere with an individual's academic or professional performance, or receipt of university services.

Part V. Procedures for the Implementation of Part IV

The procedures below distinguish between (a) situations in which someone believes that a member of the faculty or academic staff has engaged in prohibited expression, but there could be no violation of Part IV, because there had been no prior request not to engage in that expression, and (b) situations in which the claim is that Part IV has been violated, because such a request had been made and the expression was subsequently repeated.

In the first situation, the procedures deal with communication between the person who engaged in the expression and the person who objects to it. This may lead to agreement on whether the expression is or is not protected. If no such agreement emerges, the procedures provide mechanisms for obtaining clarification on whether the expression is protected.

The second situation is one in which it is claimed that unprotected expression has been repeated and constitutes a violation of these rules. Experience demonstrates that most such claims can and should be dealt with through informal processes whose goal is to enhance the understanding of those concerned and to fashion a resolution that each of them will perceive as fair and reasonable. The procedures for seeking such a resolution are set forth below. In addition, the university's formal disciplinary processes are explained, as is the grievance process available to a faculty member who believes that his or her rights have been violated by proceedings under these rules. Whether a matter is being pursued informally or through formal disciplinary proceedings, expression cannot be deemed a violation of these rules unless all of the requirements of Part IV.B.2 are satisfied.

A. Procedure prior to a repetition of expression believed to be unprotected

1. A person who objects to expression and believes that, if repeated, it could be the basis for disciplinary action, should, either directly or through an intermediary of his/her choice, explain to the faculty or staff member in question why the expression is considered objectionable and request that the expression not be repeated. If the faculty or staff member considers the expression to be protected, he/she is encouraged to discuss the matter with the person who has complained. If such a discussion fails to produce agreement on whether the expression is protected, the faculty or staff member whose expression is in question, if he or she wishes, may ask, as appropriate, the secretary of the faculty to convene a panel of at least three former chairs of the Committee on Faculty Rights and Responsibilities and/or the University Committee, or the secretary of the academic staff to convene a panel of at least three former chairs of the Academic Staff Appeals Committee and/or the Academic Staff Executive Committee to provide advice on this question, or may ask his/her department to ask for such advice.
 - a. If requested by a student, the Dean of Students office shall facilitate communication between the student and the faculty or staff member, either by helping and advising a student who wishes to speak directly with the faculty or staff member or by acting as an intermediary between them.
 - b. Oral and written communications occurring during this process between or among the person objecting to the expression of the faculty or staff member, that faculty or staff member, and an intermediary may not be used as evidence in any university disciplinary proceeding. This provision does not apply to a request that expression not be repeated.

B. Procedure following repetition of expression believed to be a violation of these rules

1. The Informal, Non-Disciplinary Process. A person who believes that these rules have been violated is encouraged, though not obliged, to discuss the matter with the faculty or staff member involved, either directly or through the intervention of an appropriate intermediary at the departmental, school/college, or campus level. Similarly, faculty or staff members are encouraged, though not obliged, to participate in efforts to resolve complaints in this informal manner.

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Oral and written communications occurring during the informal process may not be used as evidence in any university disciplinary proceeding.

- a. When an individual believes that these rules have been violated and seeks to deal with the problem informally, he/she should be prepared to identify precisely the conduct believed to constitute the violation. Precision is often aided by expressing the complaint in writing. If the matter is not promptly resolved, and if the person complained against so requests, the complainant shall provide such a written statement.
 - b. A complainant who believes that informal approaches are inappropriate, or that an informal process that has been invoked is not functioning satisfactorily, is entitled to invoke the formal disciplinary process.
 - c. A faculty or staff member is entitled to refuse to participate, or cease participating, in informal processes and insist that the matter be dropped or handled through the disciplinary process.
 - d. If a complaint about harassment is being handled informally, and there is a dispute about whether the alleged conduct constitutes a violation of these rules, the person or body handling the matter shall seek advice on this question from the Administrative Legal Services Office and inform those concerned of the advice received.
2. The Disciplinary Process.
- a. Discipline can be imposed on faculty members for violation of these rules only in compliance with the requirements of the formal processes delineated in Chapter 9 of *FPP (Faculty Policies and Procedures)*. This process is instituted by the filing of a written complaint with the provost. If the faculty conduct in question does not constitute a violation of these rules, the complaint is dismissed. If the conduct would be a violation, an investigation is conducted, including a discussion with the faculty member, if he/she wishes. Depending on the outcome of the investigation, the provost will either dismiss the case, refer it to the faculty member's department, or proceed with disciplinary action. If discipline is proposed, the faculty member is entitled to have the matter fully heard and considered by CFRR (Committee on Faculty Rights and Responsibilities), a committee of nine faculty members elected by the faculty at large. CFRR makes specific findings of fact and forwards them to the chancellor together with its recommendation as to the disciplinary action it considers appropriate. A determination by CFRR that there is adequate cause for discipline requires a majority vote with no more than two dissenting votes. *FPP* Chapter 9 should be consulted for further information concerning the details of the formal disciplinary process.
 - b. Discipline can be imposed on academic staff members for violation of these rules only in compliance with the requirements of the formal processes of Chapters 6, 8 and 9 of *ASPP (Academic Staff Policies and Procedures)*.
- C. Grievances by Faculty Members. A faculty member who believes that he/she has been treated unfairly or that his/her rights have been violated by efforts to deal with a complaint of harassment is entitled to pursue a grievance under *FPP* 8.15. Such a grievance, if not otherwise resolved to the faculty member's satisfaction, can be brought to the University Committee, which has full power to consider it and take whatever actions it deems appropriate.
- D. Grievances by Academic Staff Members. An academic staff member who believes that he/she has been treated unfairly or that his/her rights have been violated by efforts to deal with a complaint of harassment is entitled to pursue a grievance under *ASPP* Chapter 7.

[UW-Madison Faculty Document 458A, 2 November 1981 and
UW-Madison Faculty Document 758, 2 May 1988 and 786, 6 February 1989
UW-Madison Faculty Document 1402c, 1 March 1999]

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UNIVERSITY OF WISCONSIN-MADISON
STATEMENT ON CONSENSUAL RELATIONSHIPS

Guidelines

It is in the interest of the University of Wisconsin-Madison to provide clear direction and educational opportunities to the university community about the professional risks associated with consensual romantic and/or sexual relationships between members of the university community where a conflict of interest and/or a power differential between the parties exists. Individuals entering such relationships must recognize that:

(1) Conflicts of Interest may arise when such relationships occur between and among faculty, staff, students and prospective employees. University policies and ethical principles already preclude individuals from evaluating the work or academic performance of others with whom they have intimate familial relationships, or from making hiring, salary or similar financial decisions concerning such persons. The same principles apply to consensual romantic and/or sexual relationships and require, at a minimum, that appropriate arrangements be made for objective decision-making.

(2) Power Differentials between the parties in a consensual romantic and/or sexual relationship may cause serious consequences even when conflicts of interest are resolved. Individuals entering into such relationships must recognize that:

- A. the reasons for entering, maintaining, or terminating such a relationship may be a function of the power differential;
- B. where power differentials exist, even in a seemingly consensual relationship, there are limited after-the-fact defenses against charges of sexual harassment. Furthermore, under certain situations consensual relationships may be outside the scope of employment for university employees and, if so, an individual would not be covered by the state's liability protection in subsequent litigation; and
- C. it is almost always the case that the individual with the power or status advantage in the relationship will bear the burden of accountability.

Reporting Policy

Where a conflict of interest exists, or may exist, in the context of a consensual romantic and/or sexual relationship, the individual with the power or status advantage shall notify his or her immediate supervisor. The supervisor shall have the responsibility for making arrangements to eliminate or mitigate a conflict whose consequences might prove detrimental to the university or to either party in the relationship.

[UW-Madison Faculty Document 940, 6 April 1992]

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PARENTAL LEAVE POLICY

REPORT OF THE COMMITTEE ON PARENTAL LEAVE POLICY

Background

In October, 1987, Acting Chancellor Bernard Cohen, based on a recommendation from the University Committee, appointed an ad hoc committee to study the university's policy on parental leave for unclassified staff. Committee members included Janet Hyde, Professor of Psychology and Women's Studies (Chair); Jeanne Hendricks, Senior Administrative Program Manager, College of Engineering; John Lemke, Systems Programmer, Space Astronomy Lab; Virginia Sapiro, Professor of Political Science and Women's Studies; Donald Schwab, Professor of Business; and Steve Lund, Director of Personnel Support Services (ex officio).

The committee's charge was as follows:

"While there is pending State legislation on parental leave, we believe that the circumstances of university employment are sufficiently different--e.g., nine-month and 12-month appointments, tenure rules, etc.--to warrant our own effort to review our policy. We are asking you to serve as a committee to address the general question of parental leave policy for all unclassified staff. You should lay out the options available to the university under existing Regent policy and State legislation and administrative rules to clarify our policies. Suggestions for improvements in fringe benefits would be welcome. When that has been accomplished, we would like the faculty members on the committee to address the implications of the leave policy for tenure policies for probationary faculty."

The committee collected data in two areas. It conducted a survey of department chairs at the University of Wisconsin-Madison to determine the extent and nature of the use of parental leave by faculty and academic staff in the last two years. It also collected information on parental leave policies at peer institutions.

Issues in Parental Leave Policy

When evaluating an employer's parental leave policy--whether the employer is a corporation, a university, or a small business--the following questions need to be asked:

- (1) Is the leave job-guaranteed? That is, does the employee have the right to return to the same or a similar job at the end of the leave?
- (2) What is the maximum length of leave permitted?
- (3) Is the leave paid? That is, is there some provision for continuation of income during the leave? For how long? How much additional unpaid leave may be taken?
- (4) Do benefits--especially health insurance and life insurance--continue during the leave? Who bears the cost--the employer, the employee, or is there a sharing?
- (5) Is the policy gender fair? That is, are fathers covered in a policy that gives them leaves comparable to mothers?
- (6) Are adoptive parents given equal access to parental leave?
- (7) For university faculty, what happens to the tenure clock for untenured faculty who take a leave?

Current Policy at the University of Wisconsin-Madison

- (1) In practice there is an assumption that parental leaves are job-guaranteed, although this point is not stated explicitly in written policy.
- (2) For those on nine-month appointments, the mother or father has a right to take unpaid leave for any number of consecutive days to the end of the semester in which the baby is born plus unpaid leave for the entire next semester. They do not have a right to elect to take just a portion of the second semester. (Source: Board of Regents Resolution #506: System Sick Leave Policy for Faculty and Academic Staff.)

Thus, depending on the timing of a birth relative to the semester, a faculty or academic staff member might have a maximum unpaid leave that varied from approximately six months to approximately 12 months.

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For those on 12-month appointments, after taking sick leave and vacation days, the mother or father has a right to take any number of consecutive days of unpaid leave to the end of that six-month period (January to June, or July to December) and has a right to take the next entire six-month period. (Source: UW-Madison Policies and Procedures Handbook.) Again, the maximum leave might range from approximately six months to approximately 12 months, depending on the time of the birth.

(3) A woman can use her accumulated sick leave to gain paid leave at the end of pregnancy and/or following delivery. Typically the length of paid leave using this method is six weeks or less; it may be longer if her physician certifies that she is medically not yet capable of returning to work. It is important to note that those having babies are typically young women who have not worked at the university for a long period and therefore have not accumulated extensive sick leave. In addition, faculty and academic staff with teaching responsibilities may use colleague coverage, i.e., they may have paid leave without using sick leave for any portion of the semester during which they are unable to work for medical reasons, provided that colleagues assume their duties and no one has to be hired to replace them.

(4) The university can provide its contribution to health insurance for approximately five months. Employees prepay two months, the university pays during sick leave, and the university pays an additional three months during unpaid leave. After that time, if the employee is taking an unpaid leave she may continue coverage but must pay the entire charge. For state group life insurance, the university contribution continues during unpaid leave for a maximum of three years. (Source: UW-Madison Staff Benefits Booklet [Faculty, Academic Staff, Limited Appointees].)

(5) Fathers can take paid leave using accumulated sick leave only if an immediate family member is ill and needs his direct care. Typically one - two weeks would be considered acceptable for care of a wife and infant immediately after birth.

In addition, written policy states that if both parents are employed at the University of Wisconsin, both should not be on leave at the same time. (Source: Board of Regents Resolution #506: System Sick Leave Policy for Faculty and Academic Staff.) In practice this is typically not enforced.

(6) Under current policy, adoptive parents may have unpaid leaves as stated in (2) above. However, they have no right to paid leave; sick leave cannot be used because there has been no pregnancy and delivery. (Source: Wisconsin Administrative Code--UWS19.) Should the infant need medical attention, then the adoptive mother or father has the right to take sick leave to care for the infant.

(7) Any time a faculty member takes an unpaid leave for a semester, the tenure clock stops for a semester, i.e., the tenure decision is postponed by a semester. (Source: UW-Madison *Faculty Policies and Procedures* 7.04.E.) Thus, although there is no stated policy on the tenure clock for persons taking parental leave, the existing, more general policy can be applied. There currently is no stated policy for the case in which a faculty member has a baby and takes no leave or a very short leave (e.g., two weeks).

In summarizing the existing situation, it is important to make a distinction between policy and practice. For example, although the stated policy is that if both parents are employed by the UW, they may not both take leave at the same time, in practice this rule is typically not enforced. There seems no reason for it to be, particularly if the parents work in different units.

In addition, despite a written policy, actual practices may vary widely across departments. For example, one department chair communicated to us the lengths to which he had gone to obtain the longest and most favorable leave possible for a woman in his department. In another department, a pregnant faculty member consulted with the department administrative assistant, who believed that there was no provision for parental leave, much less paid leave, and so the woman took no leave, managing only by rearranging her schedule slightly. Such wide variations are created by some vagueness in written policy, but more importantly by a lack of communication throughout the university about existing policy.

Survey Results

In January, 1988, our committee sent a survey to all department chairs in the university. The purpose of the survey was to collect data on the number of women and men who had given birth or adopted babies, and on the type of leave they had taken. We asked for information for the two most recent years: 1985-86 and 1986-87. Of the 145 questionnaires that were mailed, 116 (80%) were returned.

A summary of the results is provided in Appendix A. In 1985-86, 16 faculty women out of the 311 women in these departments gave birth to or adopted a baby. In 1986-87, 13 faculty women out of 329 in those departments gave birth or adopted. The leaves they took were highly individualized, and almost all were short. It was typical to take six weeks of paid sick leave.

In 1985-86, 25 academic staff women out of 623 in these departments gave birth to or adopted a baby. The comparable statistics for 1986-87 were 24 women out of 688 in those departments. Again, the leaves were highly individualized and generally short, with six weeks sick leave being a common pattern.

In 1985-86, 32 faculty men had wives who gave birth, or adopted a baby, out of 1,572 men in those departments. The comparable statistics for 1986-87 were 45 men out of 1,644. For men on the academic staff, in 1985-86 nine adopted babies, or had wives who gave birth, out of 606 men in those departments. The comparable statistics for 1986-87 were 13 men out of 658. As with the women, leaves were highly individualized but were typically quite short. Most men took one - five days of vacation or sick leave.

Two important conclusions emerge from these data. First, the number of women giving birth to or adopting babies is small in any given year. If we apply a statistical correction because only 80% of departments responded to the questionnaire (and we surveyed only academic departments), we might project that only about 18 faculty women per year in the entire university would be eligible for a maternity leave, as would approximately 70 academic staff women (see Figure 1). Therefore, the cost of providing more generous benefits, such as longer paid leaves, should not be great because the number of persons served would not be great. There is no reason to think that women would have more babies if paid leave were available. Second, men tend to take very short leaves, typically less than a week. Other research, conducted by Professor Hyde (see Appendix D), indicates that even if men were given the option of longer paid parental leaves, they would still choose short ones. Thus the cost of extending equal benefits to men is negligible.

Policies at Peer Institutions

The committee also collected information on parental leave policies at some peer institutions. These policies are summarized in Appendix B.

Legal Considerations

Parental leave legislation is pending before the U.S. Congress. Family leave legislation was signed into law for the state of Wisconsin in April, 1988, and was effective immediately. It requires that employers provide a minimum of (a) six weeks of unpaid leave for care of a newborn or newly-adopted child, provided that the leave begins within 16 weeks of the birth or adoption; and (b) two weeks of unpaid leave for the care of seriously-ill family members. University policy is basically in conformity with the new state legislation, with one exception. Current policy for a teaching faculty member giving birth on, say, January 5, would not permit her to take a leave of exactly six weeks. Current policy would allow her to take either a very short leave until the beginning of the semester, or else a leave for the entire semester. This issue is addressed in Recommendation 2 below.

The university should continue to monitor legislation at the federal level.

Recommendations

In dealing with the demands placed on faculty and unclassified staff by the birth or adoption of a child into the family, the committee recommends that the university--through its supervisors, personnel offices, departments, and faculty committees--respond to the needs of the parents with as much flexibility and creativity as possible. Not all employees will benefit from the same response. Each employee should be encouraged to discuss his or her needs with the appropriate supervisor and work out an employment plan that responds to the employee's needs and the needs of the employing unit.

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Based on the committee's study of our own policy, the data from our survey, a consideration of policies at other universities, and much discussion, the committee recommends the following:

- (1) Compliance with Family Leave Law. In order for the university to be in conformity with state legislation, we recommend that both mothers and fathers be granted six weeks unpaid leave at the time of the birth or adoption of a child (provided that the leave begins within 16 weeks of the birth or adoption), regardless of where the leave falls in relation to the semester.
- (2) Accumulation of Paid Vacation. We recommend that each year faculty and academic staff on 12-month appointments be permitted to reserve all or part of their vacation days for later use as paid parental leave. There should be no limit to the total number of days so reserved, nor should there be a fixed number of years within which the reserved days must be used. (Current regulation: UW System, UPG-9, Regent approval will be needed for the change.)
- (3) Flexibly Scheduled Leaves for Those with 12-Month Appointments. We recommend that employment policies for new parents be as flexible as possible, consistent with work obligations. As one concrete instance, we recommend that policy be made more flexible for academic staff and faculty with no teaching responsibilities. The current policy frames 12-month faculty and academic staff leave options in six-month blocks, presumably to correspond to semesters, making their policy equivalent to that for nine-month faculty and staff, and in recognition of the special responsibilities of teaching staff. For academic staff and faculty with no teaching responsibilities, there is no need for this restriction. We recommend that they simply be allowed up to 12 months of job-guaranteed leave without pay. (Current regulation: UW Madison Personnel Policies and Procedures Handbook.)
- (4) Easing the Transition Back to Work. We recommend that serious attention be given to the issue of easing the transition back to work and facilitating employment and new parenthood. A stated policy is probably not appropriate here. However, a set of recommendations to department chairs and other supervisors is. Appendix C contains a set of suggestions on this topic. We recommend that it be distributed and that department chairs and other supervisors be urged to pay careful attention to these issues. Some may want to adopt them as department policy.
- (5) Part-Time Appointments. As one concrete instance of easing the transition back to work, we recommend a policy that faculty and academic staff be permitted to return to work part-time for the first year after birth or adoption, so long as part-time work is consistent with the requirements of the job. Those who work part-time should be paid proportionately to the percentage of time they work. Employees may wish to work part-time either because of medical limitations or because they wish to devote more time to childcare. All employing units should be receptive to reductions in percentage appointments for those individuals.
- (6) Both Parents May Take Leave at the Same Time. We recommend that the stipulation be dropped that two parents both employed at the university may not be on leave at the same time. The present policy should apply only if both are employed by the same department and a hardship to the department can be demonstrated if both take leave simultaneously. Both parents should be permitted to take childcare leave, whether at the same or different times. This policy would allow both parents to be involved in childcare if they desire. (Current regulation: Regent Resolution #506. Regent approval would be needed for change.)
- (7) Use of Sick Leave by Father. The current rules permit a spouse to use sick leave during the prenatal, delivery, and post-delivery period only if there are documented medical reasons requiring both parents to be absent. We recommend that the father be allowed to use sick leave for all prenatal physician's visits and the delivery without need for medical documentation. We also recommend that the father be allowed to use sick leave for the post-delivery period at the recommendation of a physician that his presence and care would be helpful, although perhaps not required. (Current regulation: Administrative Code UWS 19.01. May require Regent approval for a change in the Administrative Code.)
- (8) Equal Treatment for Mothers and Fathers. We recommend that policy treat fathers and mothers equally in all respects, including paid sick leave. We do not anticipate that a gender-fair policy for paid leave programs that might be created in the future would mean noticeable monetary costs or work disruption, because few fathers choose to take leaves of more than a few days, even when asked what they would do under ideal conditions (see Appendix D). (Regent and legislative approval are needed.)

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(9) Equal Treatment for Adoptive Parents. We recommend that policy for adoptive parents be in all respects equal to that for biological parents. This would require modification of the Administrative Code, which authorizes paid sick leave only in the case of pregnancy. Adoptive parents should have equal rights to paid leave, even though they cannot literally claim sick leave. Some reasonable limitations on the length of paid sick leave might be imposed. (Regent and legislative approval are needed.)

(10) Paid Infant Care Leave. We recommend that the university explore means of financing a paid or partially-paid family leave of six months, not just for disability, but in order to meet important childcare responsibilities. One possible source is our income continuation insurance plan, which is already in existence, although it would need to be modified to extend beyond disability to the care of infants or newly-adopted children. However, such changes could not be made unilaterally for our university, and most likely would have to cover all state employees. (This may well require action by the legislature.)

(11) Untenured Faculty and the Tenure Clock. Faculty members in the tenure track present a unique case in dealing with birth and adoption. The intensity of work required to attain tenure at the University of Wisconsin-Madison greatly exceeds a 40-hour work week, and the hours must extend into evenings and weekends. The committee recommends that the university recognize in a number of ways the substantial responsibility carried by assistant professors with new children in the household.

(a) Reduced Appointments. In some cases a faculty member may wish to assume childcare responsibilities or may not be physically able to return to work on a full-time basis after the birth of a child. Temporarily-reduced appointments should be available for these individuals, with an appropriate extension of the tenure clock. The *Faculty Policies and Procedures* 7.04 (D) provides that each year of service at the rate of at least one-half time but not more than three-quarters time shall count as a half year in the probationary period, and that a rate greater than three-quarters time should be counted as a full year. We recommend that faculty be informed of this option and permitted to use it for parental leave.

(b) Extension of Tenure Clock When Paid Sick Leave Taken. Under the current rules the tenure clock does not stop when paid sick leave is taken. This means that an assistant professor who remains on the payroll for three months of sick leave has no extension of the tenure clock, but the assistant professor who takes a research leave paid by another agency obtains additional time on the tenure clock. Thus, women who take sick leave due to pregnancy or childbirth remain on the tenure clock for the leave period. We recommend that the University Committee, in considering requests for extension of the tenure clock, grant extension based on time lost due to sick leave and the negative impact this had on the opportunity to meet the criteria for tenure.

(c) Extension of the Tenure Clock When No Leave Is Taken. In some cases an extension of the tenure clock may be appropriate even though no leave is taken and the percentage appointment is not reduced. In the past, the University Committee has approved additional time on an individual's tenure clock because of the demands placed on an individual by illness or uncontrollable circumstances. A similar case may be presented where an assistant professor has had a new child and has substantial childcare responsibilities. We recommend that untenured faculty women or men who have had a birth or adoption during the probationary period, have the right to apply to the University Committee for an extension of the tenure clock up to one year, even when the faculty member does not take a leave or a reduced appointment. The application would be based on the faculty member's substantial childcare responsibilities. The faculty member should make the application through the department and dean to the University Committee. Such requests must be made before the tenure review process begins.¹

¹ Our rationale for this recommendation is that untenured faculty at the University of Wisconsin-Madison need to work considerably more than 40 hours per week in order to do the research, teaching, and service required to earn tenure. Many faculty women and men with new babies can work 40 hours per week and choose to do so, but they cannot realistically be expected to work more than that. They are therefore disadvantaged when judged for tenure. Increased flexibility in the tenure clock creates more equitable opportunities for them.

Education and Dissemination

We recommend that, pending modification of policies, the existing policies should be publicized. We found that some department chairs and administrators were not well informed about existing policy and actually thought the policy was less generous than it is. We recommend that the policy be printed as a pull-out section of *WisconsinWeek* that it be distributed to all department chairs, and that extra copies be printed and given to department administrators for distribution to new employees each year. Serious consideration should be given to printing a brochure describing our leave policies, which could be handed out to candidates for faculty and staff positions. In winning prospective employees, attractive fringe benefit programs may help to compensate for our relatively low pay scale.

Summary Rationale

Two primary assumptions motivate our policy recommendations: (1) Policies should be gender-fair. Men who take responsibility for childcare should receive support for their choice, and this option should receive clear recognition in policy. (2) There should be equity between those who use the provisions of the policy to the maximum extent and those who do not make use of them.

A more generous parental leave policy would be beneficial to the university as well as to individual employees. Generous parental leaves would enhance the benefits package and be attractive to prospective employees, helping to compensate for our relatively low pay scale. A progressive parental leave policy should also help in the recruiting of dual-career couples, an effort in which the university is increasingly engaged.

These recommendations should be seen in the context of a national movement regarding parental leave, and more generally, support for families, including childcare and care of seriously-ill elderly parents as well. Recent state legislation and pending federal legislation on parental leave and family leave speak to the growing consensus on the importance of these policies. The University of Wisconsin has an opportunity to be a leader in this movement and to attract national attention with more generous policies.

[UW-Madison Faculty Document 771, 3 October 1988. The Faculty Senate passed the motion to endorse recommendations 1 through 10, and adopt recommendation 11 at the October 3, 1988 meeting.]

MISCONDUCT IN SCHOLARLY RESEARCH

PROCEDURES FOR DEALING WITH MISCONDUCT IN SCHOLARLY RESEARCH
January 15, 1991

I. INTRODUCTION

The University of Wisconsin-Madison has long recognized that honesty is an essential component of scholarly activity. Faculty and staff are reminded that Chapter UWS 8 of the Wisconsin Administrative Code, the Unclassified Staff Code of Ethics, provides that:

"Every member of the faculty and academic staff at the time of appointment makes a personal commitment to professional honesty and integrity that meets the demanding standards of the state and national academic communities."

In addition, Section 8.02 A of the university *Faculty Policies and Procedures* states:

"Furthermore, every faculty member has an obligation to maintain professional honesty and integrity, to seek knowledge..."

Failure to adhere to these standards can be cause for discipline or dismissal.

Students are reminded that Chapter UWS 14, Student Academic Disciplinary Procedures provide under Statement of Principles:

"The board of regents, administrators, faculty, academic staff and students of the university of Wisconsin system believe that academic honesty and integrity are fundamental to the mission of higher education and of the university of Wisconsin system. The university has a responsibility to promote academic honesty and integrity and to develop procedures to deal effectively with instances of academic dishonesty. Students are responsible for the honest completion and representation of their work, for the appropriate citation of sources, and for respect of others' academic endeavors. Students who violate these standards must be confronted and must accept the consequences of their actions."

A. General Provisions

1. For purposes of these procedures, misconduct in scholarly research is defined as "fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scholarly community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data."
2. Misuse by a researcher of university funds (including grant and contract funding from extramural sponsors) is also cause for discipline or dismissal and may be cause for criminal prosecution. However, an allegation of misuse of funds is not within the scope of this policy; such allegation shall be referred promptly to the appropriate dean who will consult with the assistant vice chancellor for business services concerning an appropriate course of action.
3. A violation of institutional procedures or federal regulations on the protection of human or animal research subjects or a violation of state or federal safety laws or regulations is also not within the scope of this policy. An allegation regarding any such violation shall be promptly referred to the chair of the appropriate human subjects committee, to the chair of the appropriate animal research committee, or to the chair of the appropriate safety committee at the university.
4. The goal of the procedures outlined below is to assure the integrity of scholarly research, to achieve a rapid and equitable resolution of all charges and to assure that all parties are treated with fairness. In order to protect the reputation of an innocent party, the procedures will preserve the maximum level of confidentiality consistent with law and with justice for all parties to these procedures. All parties will take whatever action is required to avoid any unnecessary conflict of interest.

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5. At any stage of the inquiry, review, or hearing, the vice chancellor for academic affairs and provost (vice chancellor and provost) shall be promptly notified if any of the following conditions exist: (1) there is an immediate health hazard involved, (2) there is an immediate need to protect federal funds or equipment, (3) there is an immediate need to protect the interests of any person making the allegation or of any individual who is the subject of an allegation as well as his or her co-investigators and associates, (4) it is probable that the alleged incident is going to be reported publicly, or (5) there is a reasonable indication of possible criminal violation.
6. Where an inquiry, review, or hearing results in a finding that no misconduct has occurred, the university will not institute a new inquiry, review, or hearing into an allegation of misconduct where the allegation is made against the same person and is based on material facts, which were reviewed and found not to constitute misconduct during the prior inquiry, review, or hearing, unless new material evidence is presented by a different complainant, or unless the person who is the subject of the inquiry, review, or hearing requests another proceeding.
7. Because of the difficulties of assessing stale claims and the unfairness to the person against whom the allegation is made, allegations based on conduct which occurred seven years or more prior to the making of the allegation will not be inquired into under this policy unless the circumstances indicate that the alleged conduct was not discoverable earlier.

B. Procedures for Reviewing Reports of Possible Misconduct in Scholarly Research Against Faculty and Academic Staff (see *Faculty Policies and Procedures* 9.14. and *Academic Staff Policies and Procedures* Chapter 6.)

[FPP and ASA will need to be revised to add reference to the standing Hearing Committee on Misconduct in Scholarly Research and to incorporate the procedures below for addressing such alleged misconduct.]

II. INQUIRY

A. Initial Steps

1. An informal report of possible misconduct shall be brought to the attention of the person with immediate responsibility for the work of the individual involved. The person receiving the informal report is responsible for either resolving the matter or encouraging the submission of a formal allegation. An anonymous report shall not be treated as a formal allegation, but may be the basis for an allegation filed by the recipient of the report. The university will make every effort to protect the privacy of those making an accusation. However, if an inquiry is required, fairness may necessitate revealing the identity of the individual making the accusation to the individual against whom the allegation is made and to the inquiry committee. Such a release will occur during a chancellor's review and hearing.

B. Allegations

1. A formal allegation of misconduct in scholarly research should be made to the chair of the department (or functional equivalent) or to the corresponding academic dean or, in case of conflict of interest on the part of the chair or academic dean, to the Dean of the Graduate School. If the formal allegation is made to the chair of the department, the chair will forward it to the academic dean of the school or college or, in case of conflict of interest on the part of the academic dean, to the Dean of the Graduate School. The dean is responsible for determining whether the complaint is non-frivolous and falls within the scope of these procedures, or whether it should be resolved by other methods. Any determination that a complaint is not a serious allegation of misconduct in scholarly research, along with supporting documentation for reaching such a decision, shall be transmitted promptly to the vice chancellor and provost.
2. Unless the allegation is determined to be outside the scope of these procedures or is not a serious allegation of misconduct in scholarly research, the dean, if directed to do so by the chancellor, shall promptly convene an ad hoc committee to conduct an inquiry into the allegation.

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This committee shall consist of at least three individuals who have no responsibility for the research under inquiry, who can be impartial, and who have no interests which would conflict with the university's interest in securing a fair and thorough inquiry. The committee, as a whole, shall have the competence and expertise appropriate for the inquiry. The inquiry committee may, but need not, include individuals from outside the university. Simultaneously with the appointment of the inquiry committee, the responsible dean shall notify the individual against whom the allegation has been made of the allegation. The inquiry is an informal administrative process to gather and review factual information. It is designed to separate allegations deserving of further investigation from those which are unjustified or clearly mistaken. Even if the individual against whom the allegation has been made terminates or has terminated his or her status with the university (student or employee), the inquiry will be held.

3. When possible, the inquiry committee shall interview the individual against whom the allegation has been made and other individuals with relevant information. Summaries or tapes of the interviews shall be prepared and submitted to the interviewed person for comment or revision. The committee shall collect, review, and protect all documentation and other materials relevant to the allegation including but not limited to research data, proposals, publications, correspondence and memoranda. All faculty, staff, and students are obliged to cooperate with the committee by supplying requested documents and information.
4. The individual against whom the allegation has been made shall be provided with a copy of the report of the committee by the committee chair prior to the committee's submission of the report to the appointing dean. The individual shall be given an opportunity to respond in writing within ten (10) days of his/her receipt of the report. The committee shall consider any such response and make any appropriate changes in its report before submitting it to the appointing dean.
5. The report of the inquiry committee, along with any response by the individual against whom the allegation of misconduct has been made, shall be completed and transmitted to the appointing dean as soon as possible, but in no case later than 60 days after formal notification to the individual. Any extension of this deadline requires documentation of unusual circumstances, and must be approved by the vice chancellor and provost. The written report should contain a precise specification of any charges on which further formal investigation is recommended. The report shall state the evidence reviewed, summarize relevant interviews and include the conclusions of the inquiry. The committee is responsible for maintaining and protecting the documentation relating to the decision and providing it to the vice chancellor and provost, who shall preserve it for a period of at least three years.
6. Any determination by the inquiry committee of nonsubstance of the allegation shall be reported to the vice chancellor and provost through the appointing dean. The dean shall advise the individual making the allegation and the individual against whom the allegation was made about the decision of nonsubstance.
7. An inquiry report recommending further investigation shall be provided to the dean, vice chancellor and provost, and chancellor immediately upon its completion. The dean shall notify the individual against whom the allegation has been made, and the complainant.
8. Within 20 days after receipt of an inquiry report recommending further action, the chancellor, after consultation with the appointing dean, shall review the matter, shall offer to discuss the matter with the person against whom the allegation has been made, and shall determine whether to dismiss the case or to bring charges that would warrant discipline or dismissal. If the chancellor decides to bring charges, he/she shall serve a statement of charges on the person charged in the manner provided for in UWS 4.02 or 11.02. The statement shall include notice of the hearing/appeal procedures, and shall specify the sanction deemed appropriate. Service shall be made within 30 days after completion of the inquiry. If the person charged does not request a hearing, the matter shall proceed according to UWS 4.02(1) or 11.02(1). Charges are allegations, not a determination of whether the matters alleged are true.
9. The person charged may request a hearing within 20 days after notice of the statement of charges (25 days if notice is by first-class mail and publication). The request for hearing shall be

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addressed in writing to the chancellor who shall forward it to the chair of the Hearing Committee on Misconduct in Scholarly Research. The chancellor shall at the same time refer the matter to that committee for appropriate proceedings.

10. The vice chancellor and provost is responsible for notification of any funding agencies involved.

III. HEARING AND REVIEW

A. HEARING

1. If charges are referred to the Hearing Committee on Misconduct in Scholarly Research, the vice chancellor and provost shall appoint at least three individuals to that committee who were not on the inquiry committee, who have no responsibility for the research under investigation, who can be impartial, who have no interests which would conflict with the university's interest in securing a fair and thorough investigation, and who have the competence and expertise appropriate for the hearing of this matter. One member of the committee shall be a person with legal training and experience, and that person shall be the chair of the committee. Where the person against whom charges have been made is a faculty member, a majority of the hearing committee must be UW-Madison faculty members. The vice chancellor and provost may also consider appointment of parties to the committee from outside the university. The vice chancellor and provost will consult with the University Committee or the Academic Staff Executive Committee, as appropriate, prior to selection of members for the hearing committee.
2. If the research is funded by an agency within PHS, the vice chancellor and provost shall report the institution's decision to initiate a hearing in writing to the Director, Office of Scientific Integrity (OSI) on or before the date the hearing begins. The notification shall state the name of any individual against whom charges have been made, the general nature of the charges, and the PHS application or grant number involved.
3. A hearing on the charges shall be commenced not later than 20 days after the request therefor, except this time limit may be enlarged by mutual written consent of the parties or by order of the hearing committee. The hearing shall be a fair hearing and shall include the procedures and rights provided for faculty members in UWS 4.05, 4.06, and for academic staff members in UWS 11.05 and 11.06.
4. Any individual charged shall make available for examination by the committee all of the following if requested by the committee--laboratory notebooks, records of research activities such as summary reports and drafts of unpublished manuscripts, and other materials associated with the research, including data generated by others. All faculty, staff and students are obliged to cooperate with the committee by supplying requested documents and information.
5. The hearing committee is charged with determining whether the specific charges are true. The hearing committee will be provided, upon request, legal counsel pursuant to UWS 4.06(f) and 11.06 (2)(b). The hearing committee shall be responsible for assuring that both the evidence tending to show that misconduct occurred and the evidence tending to dispute that misconduct occurred is presented. The hearing committee shall have the responsibility to question all witnesses. Expert opinions, other information, records and data may be requested by the hearing committee. The committee will maintain a file of all information received during the hearing. Following the hearing procedure, the file will be transmitted to the vice chancellor and provost.
6. In order to make a finding of misconduct in scholarly research, the committee must be satisfied that there is clear and convincing evidence of such misconduct.
7. The hearing procedure should ordinarily be completed by the hearing committee within 110 days of its initiation. This includes conducting the hearing, preparing the draft report of the findings, making that report available for comment by the individual against whom the charges were made, and submitting the final report to the vice chancellor and provost.
8. The committee will prepare a draft report and provide it to the individual against whom the charges were made. Such individual will have ten (10) days from receipt of the draft report to submit a response to the committee. At the end of that ten (10) day period, the committee will

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prepare a final report for the vice chancellor and provost. The final report of the hearing committee to the vice chancellor and provost should include the policies and procedures under which the hearing was conducted, the findings of the committee, and the basis for the findings, and any recommended sanction(s).

9. Except as provided below, the committee report must be submitted to the vice chancellor and provost within 110 days of the service of notice of charges on the individual charged, so that the vice chancellor and provost can report to OSI, where appropriate, within the required 120 days.
10. If the research is funded by an agency within PHS, the vice chancellor and provost shall submit a report to OSI which describes the policies and procedures under which the hearing was conducted, how and from whom information was obtained, the findings and the basis for the findings, an accurate summary of the views of any individual found to have engaged in misconduct and a description of any sanctions being sought by the university. The vice chancellor and provost shall make the documentation substantiating the hearing committee's findings available to the Director of OSI.
11. If it appears that it will be impossible to complete the hearing committee report within 110 days, no later than 90 days after service of the notice of charges, the committee will provide the vice chancellor and provost with a written request explaining the need for extra time and an estimate of the expected date of completion. If the research is funded by an agency within PHS, that request will be forwarded to OSI by the vice chancellor and provost. If the request for additional time is granted by the OSI, the committee will prepare periodic progress reports as requested by the OSI.

B. Further Review for a Faculty Member

1. Within 10 days of receipt of the hearing committee's final decision, a faculty member may ask for review of the decision by the Committee on Faculty Rights and Responsibilities (CFRR) on the hearing committee record on either or both of these grounds: 1) that the decision of the hearing committee is clearly erroneous; 2) that the recommended sanction is inappropriate. If such review is not requested within 10 days, the faculty member is deemed to have waived the right to such review and the hearing committee decision will be deemed submitted to the chancellor for review under UWS 4.07.
2. If the faculty member makes a timely request for review by CFRR, CFRR will provide an opportunity for the faculty member and hearing committee to submit a written statement and to appear personally before CFRR. CFRR, based on the hearing committee record and any statement and arguments submitted by the faculty member or hearing committee, will make a decision and provide it to the chancellor for review.

Procedures thereafter shall be according to UWS 4.07 and 4.08 or UWS 6.01.

C. Further Review for an Academic Staff Member

1. Within 10 days of the receipt of the hearing committee's final decision, an academic staff member may ask for review of the decision by [the appropriate review committee to be determined in consultation with the Academic Staff Assembly, hereinafter called "Review Committee."] on the hearing committee record on either or both of these grounds: 1) that the decision of the hearing committee is clearly erroneous; 2) that the recommended sanction is inappropriate. If such review is not requested in 10 days, the academic staff member is deemed to have waived the right to such review and the hearing decision will be deemed submitted to the chancellor for review under UWS 11.07 or 11.11.
2. If the academic staff member does request review by the Review Committee within 10 days, that committee will provide an opportunity for the academic staff member and the hearing committee to submit a written statement and to appear personally before the Review Committee. The Review Committee, based on the hearing committee record and any statement and arguments submitted by the academic staff member or the hearing committee, will make a decision and provide it to the chancellor for review.
3. Procedures thereafter shall be according to UWS 11.07-11.10 or 11.11.

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D. Procedures for Reviewing Reports of Possible Misconduct in Scholarly Research Against Students

Reports of possible misconduct against students shall be handled according to the requirements of UWS 14. Any time limits applicable under 42 CFR Part 50 will be observed in student misconduct in scholarly research investigations.

E. Institutional Responsibility to Notify OSI, Where Research is Supported by PHS Grants

During the course of the hearing, the hearing committee shall apprise the chancellor and the vice chancellor and provost shall apprise OSI of any significant findings which might affect current or potential Department of Health and Human Services funding of any individual charged or which might require agency interpretation of funding regulations.

At any stage of the inquiry or hearing, the committee shall promptly notify the vice chancellor and provost and the vice chancellor and provost shall notify OSI if any of the following conditions exists: (1) there is an immediate health hazard involved, (2) there is an immediate need to protect federal funds or equipment, (3) there is an immediate need to protect the interests of any person making the allegation or of any individual who is the subject of an allegation as well as his or her co-investigators and associates, (4) it is probable that the alleged incident is going to be reported publicly, or (5) there is a reasonable indication of possible criminal violation. If a criminal violation is possibly involved, the institution must inform OSI within 24 hours.

If an inquiry, chancellor's review, or hearing is to be terminated for any reason without completing all the relevant requirements, the vice chancellor and provost shall make a report of such planned termination, including a description of the reasons for such termination, to OSI, which will then decide whether further investigation review should be undertaken.

If further review by CFRR or the Review Committee, the chancellor, or the Board of Regents alters the decision, the vice chancellor and provost shall notify OSI of the changes with an explanation of such changes.

IV. SUBSEQUENT ACTION

A. Subsequent Action Following Completed Hearing and Appeal or Student Academic Misconduct Procedures

1. If the alleged misconduct in scholarly research is substantiated, the vice chancellor and provost shall notify any agency sponsoring the research of the results of the hearing and appeal or student academic misconduct procedures under UWS 14. If it appears that the research is based on scholarly misconduct and is invalid, the researchers shall be requested to withdraw all pending abstracts and papers emanating from the research, and editors of journals in which relevant papers appeared shall be notified. Moreover, institutions and sponsoring agencies with which the individual has been affiliated shall be notified if it is believed that the previous research is based on scholarly misconduct and is invalid.
2. Appropriate disciplinary action, where misconduct in scholarly research is substantiated by the above-stated procedures, shall be taken with regard to a faculty member, an academic staff member or a graduate assistant or other student.
3. If an allegation of misconduct in scholarly research is not substantiated by the hearing and appeal, or by the student academic misconduct procedures under UWS 14, the university shall make diligent efforts, as appropriate, to protect or restore the reputation of any person alleged to have engaged in the misconduct. The university shall also take steps to assure that any person who made an allegation in good faith will not experience retaliation. Additional protection against retaliation is afforded under Wis. Stats., sec. 230.80, et seq.

[UW-Madison Faculty Document 867a, 4 February 1991.]

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APPENDICES: BRIDGING DOCUMENTS REGARDING FEDERAL
PROCEDURES FOR DEALING WITH MISCONDUCT IN SCHOLARLY
RESEARCH

Appendix A. Implementation of Federal Policies Regarding Misconduct in Research

Introduction

In 2000, the Office of Science and Technology Policy (OSTP) promulgated a policy regarding misconduct in research in the conduct of federally sponsored research or proposal submitted to Federal agencies for research funding. The policy requires all federal funding departments and agencies to adopt regulations which become a term and condition of receipt of federal research funding. The OSTP policy encourages a certain amount of uniformity among funding agencies.

In 1991, the Faculty Senate adopted Faculty Document 867a, Procedures for Dealing with Misconduct in Scholarly Research.

This bridging document provides processes for implementing the federal policies consistent with Faculty Document 867a.

Research Misconduct

Misconduct in federally funded research is fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

Fabrication is making up data or results and recording or reporting them.

Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct does not include honest error or differences of opinion nor does it supersede or establish an alternative to existing regulations or procedures for handling fiscal improprieties, the ethical treatment of human or animal subjects, criminal matters, personnel actions against federal employees, or actions taken under the HHS debarment and suspension regulations.

Research misconduct under Faculty Document 867a may also include other practices that seriously deviate from those that are commonly accepted within the scholarly community for proposing, conducting, or reporting research.

Confidentiality

Consistent with a thorough, competent, objective and fair misconduct proceeding and to the extent allowed by law, disclosure of the identity of respondents and complainants is limited to the extent possible to those who need to know.

Preservation of Evidence

As soon as feasible at the allegation or inquiry stages, the institution shall take all reasonable and practical steps to obtain custody of all research records and to the extent possible, sequester them in a secure manner.

Additional Information

For allegations of misconduct in federally funded research, the Graduate School shall provide information to the Inquiry Committee convened under II.B.2. or the Hearing Committee convened under III.A.1. of Faculty Document 867a regarding the procedures to be applied as required by the federal policy or the regulations of the specific federal funding department or agency including:

1. A finding of research misconduct requires that:
 - there is a significant departure from accepted practices of the relevant research community;
 - the misconduct is committed intentionally, or knowingly, or recklessly;
 - the allegation is proven by a preponderance of evidence.

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2. The time requirements for completion of the inquiry and the investigation if such requirements significantly differ from those set forth in II.B. and III. of Faculty Document 867a.
3. Any conditions, in addition to those identified in I.A.5. or III.E. of Faculty Document 867a, that require notification of the provost and the federal funding agency.
4. The length of time the documentation relating to any decision must be preserved.
5. Any requirement to notify the federal agency if the inquiry or investigation is being closed prior to completion of the process.
6. Any additional requirements contained in the federal funding agency's regulations.

Appendix B. Policy Regarding Institutional Responsibility for Responding to and Reporting Allegations of Research Misconduct in Federally Funded Research

The University of Wisconsin-Madison will:

1. Maintain appropriate written policies and procedures for addressing allegations of research misconduct and have an active assurance of compliance.
2. Respond to any allegation of research misconduct in a thorough, competent, objective and fair manner.
3. Ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional or financial conflicts of interest with the complainant, respondent or witnesses.
4. Foster a research environment that promotes the responsible conduct of research, discourages research misconduct, and deals promptly with allegations or evidence of possible research misconduct.
5. Take reasonable and practical steps to protect the positions and reputations of good faith complainants, witnesses and committee members and protect them from retaliation.
6. Provide confidentiality to extent possible to respondents, complainants, and research subjects.
7. Take all reasonable and practical steps to ensure the cooperation of respondents and other institutional members with research misconduct proceedings.
8. Cooperate with the federal funding agency during any research misconduct proceeding or compliance review and, as appropriate, assist in administering and enforcing any administrative actions imposed.

The written policies and procedures (under 1. above) will:

1. To the extent possible protect the confidentiality of respondents, complainants and research subjects.
2. Provide a thorough, competent, objective, and fair response to allegations of research misconduct consistent with and within the time limits of federal funding agencies requirements, including precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses.
3. Provide the respondent with:
 - a. Notice of the allegations.
 - b. Opportunity to provide written comments on the inquiry report and the draft report of any investigation.
4. Maintain adequate records for the proceeding.
 - a. Either before or when the respondent is notified of the allegation or when additional research records or evidence that is discovered during the course of a research misconduct proceeding, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence relevant to the research misconduct proceeding

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- b. Inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass shared scientific instruments custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.
- c. Where appropriate, give the respondent copies of or supervised access to the research records.
- d. Maintain the research records, the inquiry report, any documentation of a decision not to investigate, the investigation and the complete record of any appeal at the university for the amount of time required by the federal funding agency.

Appendix C. Institutional Compliance and Assurance with Public Health Service Policies on Research Misconduct

The University of Wisconsin-Madison has written policies and procedure in compliance with 42 CFR Part 93 for inquiring into and investigating allegations of research misconduct and complies with its own policies and procedures and the requirements of this part.

The university will take all reasonable and practical specific steps to foster research integrity including informing researchers about its policies and procedures for responding to allegations of research misconduct and its commitment to compliance with those policies and procedures.

[UW-Madison Faculty Document 2006 and 2006a, adopted 3 March 2008]

II-323
REPORT OF THE UW-MADISON AD HOC ELECTRONIC
DATA ADVISORY COMMITTEE
POLICIES AND PROCEDURES GOVERNING ACCESS TO ELECTRONIC FILES

September 13, 1991

INTRODUCTION

The Electronic Data Advisory Committee was created by the University Committee to clarify the privacy and confidentiality status of electronic data and to draft procedures for the university to follow in providing access to information in this form.

The faculty and staff of the university should be under no delusions as to the essential confidentiality of their electronic files. Even when one takes elaborate precautions (e.g., file encryption) the nature of modern communication networks is such that true confidentiality is impossible to guarantee. In addition, the Wisconsin open records law may require public disclosure of electronic data. All users of these services should be apprised of these facts.

The Federal Electronic Communications Privacy Act of 1986 (18 U.S.C. sec. 2511) and parallel language adopted by the Wisconsin Legislature (sec. 968.31(2), Wis. Stats.) allows the university to examine electronic information when necessary to protect the rights and property of the university. The proposed procedures provide a mechanism for doing so in a way that respects the rights of individuals involved.

The report that follows deals with the question of appropriate procedures for the university to follow in cases of requests for access to electronic files initiated internally. (Requests for access that originate external to the university will normally arise under circumstances described in Section 6 of these procedures. In such cases, the university will provide notice to the controller and the opportunity to respond, whenever possible.)

In general, all computer and electronic files should be free from access by any but the authorized users of those files. Exceptions to this basic principle shall be kept to a minimum and made only where essential to

1. meet the requirements of the state open records law and other statutory or regulatory requirements;
2. protect the integrity of the university and the rights and property of the State;
3. allow system administrators to perform routine maintenance and respond to emergency situations such as combating "viruses" and the like; and
4. protect the rights of individuals working in collaborative situations where information and files are shared.

Accordingly, the Ad Hoc Electronic Data Advisory Committee recommends the following actions:

1. The university should make a special and periodic effort to notify users that:
 - a. *Faculty Policies and Procedures* include rules governing the privacy of electronic data;
 - b. State or federal regulations may supersede these policies and procedures; and
 - c. electronic communications and data files are not secure from unauthorized access;
2. Because the proposed policy does not address how departments and schools may access students' instructional accounts, departments and schools should codify their procedures for managing and gaining access to such accounts;

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3. The faculty adopt the following policy and procedures to govern access to electronic files controlled by faculty and staff:

POLICY AND PROCEDURES GOVERNING ACCESS TO ELECTRONIC FILES AT THE UNIVERSITY OF WISCONSIN-MADISON

PRINCIPLES:

The procedures are based on three fundamental principles:

1. Intrusion into electronic files requires carefully considered cause;
2. Controllers of files should be notified before accessing their files; and
3. The university has an obligation to protect the integrity of the university, its services, its confidential data, and the rights and property of the State.

DEFINITIONS

As used in these procedures:

1. "Electronic File" encompasses information stored and/or transmitted in electronic form, including but not limited to text, data, sound, graphics, images, and video, irrespective of its recording and transmission media or its format.

Examples of electronic files include e-mail messages, databases, and magnetic tape files and subsets thereof.
2. "Controller of a file" is defined as follows:
 - a. on a single user computer under the control of a single person (e.g., a computer in a faculty office) the files normally are controlled by that person;
 - b. on computers accessed by more than one individual, but which do not have an operating system that identifies files with a specific user, the individual responsible to the university for control of the computer (e.g., the laboratory director or department chair) is considered to be the controller of electronic files resident on that computer;
 - c. On multiuser systems, an individual is typically registered or given an account. The registered user or account holder is normally considered to be the controller of files held in that account;
 - d. In "work for hire" situations where one party enters or edits material for the originator of a file, the one responsible for originating the material in the file is the controller of the file. The person charged with entering the material is usually considered to be an authorized user. For example, when a secretary or a research assistant working under explicit directions uses a computer to enter and edit a document for a faculty member, the faculty member is the controller of the file and the secretary or research assistant is an authorized user.
3. "Authorized User" includes the controller of a file and someone who is given explicit access to the file by a controller.
4. "System Administrator" is an individual who has been charged by a university unit with maintaining a computer system and its software at an acceptable level of performance for the service that it is expected to provide.

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PROCEDURES

1. Except as provided for in Sections 5 and 6, no one but an authorized user of an electronic file may intentionally access that file without receiving either
 - a. The permission of the controller of the file; or
 - b. The express written permission of the vice chancellor for academic affairs and provost, who may grant such permission only in accordance with the procedures established by Sections 2 and 3 below.
2. Except as provided for in Sections 5 and 6, the vice chancellor for academic affairs and provost may grant permission to those persons listed in section 2(b) to access a computer or electronic file only upon determining that the all of the following steps have been taken:
 - a. The vice chancellor for academic affairs and provost has received in writing a request for access that specifies the reasons for the requested access and lists the requested file(s) by name, contents, or a description that clearly limits access to the file(s) necessary to further the purposes designated in Section 2(f).
 - b. The written request has been made by a dean, director, department chair, vice-chancellor, or other person who has responsibility for protecting the integrity of the university, its services, and the rights and property of the State.
 - c. The vice chancellor for academic affairs and provost has notified in writing the controller of the file(s) that a request for access to the specified file(s) has been made and is pending. When there is doubt as to who is the controller of a file, notice should be sent to all the known individuals likely to have such an interest.

Notification must, at a minimum,

- i. specify the name of the party requesting the file(s);
 - ii. list by name, description, or contents the file(s) requested;
 - iii. indicate that unless waived in writing by the controller of the file(s) within four days of notification, an inquiry as specified in section 2(d) of these procedures will be held to examine whether justification exists for granting the requested access;
 - iv. indicate that in the event a section 2(d) committee has been appointed, the controller of the file(s) has a right to make known to the committee his or her views on whether access is justified;
 - v. indicate that the file(s) in question shall not be altered or deleted by anyone, including the controller and that alterations or deletions may be a basis for disciplinary action; and,
 - vi. if relevant, indicate that the vice chancellor for academic affairs and provost has exercised his or her power under section 3 to take the minimum steps necessary to preserve the contents of the subject file(s).
- d. The vice chancellor for academic affairs and provost has appointed a committee of three members, all of whom are otherwise uninvolved in the request and at least two of whom are members of the faculty or academic staff (as is appropriate to the case), to inquire into whether a justification under section 2(f) exists to warrant granting the requested access. Unless granted additional time, the committee will conduct its inquiry and make a written report to the vice chancellor within ten calendar days of its appointment.

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At a minimum, the committee shall

- i. examine the written request for access provided to the vice chancellor and provost under Section 2(a); and
 - ii. offer all those notified under Section 2(c) an opportunity to make known to the ad hoc committee their views on whether access is justified.
- e. The vice chancellor for academic affairs and provost has received the results of the inquiry specified in Section 2(d) of these procedures or has received the controller's waiver of the section 2(d) inquiry.
 - f. The vice chancellor for academic affairs and provost finds that the requested access is necessary to protect the integrity of the university, its services, and the rights and property of the State.
 - g. The vice chancellor for academic affairs and provost has put in writing, with as much specificity as possible, the reasons for granting access to the file(s).
3. Upon the written request of one of those persons listed in section 2(b) or on his or her own initiative, the vice chancellor for academic affairs and provost may authorize the appropriate university unit to take all necessary steps to preserve and save the contents of any file(s) within the university's computer systems. An order to preserve the contents of the file is meant to assure that the data in the file(s) is not destroyed, altered, or lost. Any such order does not constitute permission to open, read, or otherwise use the contents of the file(s). Access to the contents of the file(s) shall be obtained only under procedures specified herein or under conditions stated in Sections 5 and 6.
 4. All requests for access to electronic files made under the Wisconsin open records law shall be made through the office of the university's Custodian of Records. It is recommended that the office of the Custodian of Records promulgate procedures consistent with the Wisconsin open records law and the principles expressed in these procedures. Such procedures shall provide for notice to the controller before public disclosure, whenever possible.
 5. Nothing in these procedures is meant
 - a. to supersede the usual procedures followed by departments and schools in monitoring student accounts given for specific course work; or
 - b. to preclude computer system administrators from authorizing the routine maintenance of campus computer or communication systems or the rectification of emergency situations that threaten the integrity of campus computer or communication systems, provided that use of accessed files is limited solely to maintaining or safeguarding the system (which may include safeguarding the system from illegal use) or solving specific problems.
 6. Nothing in these procedures is meant to either limit or expand access to files pursuant to Wisconsin or United States statutes or regulations, such as those governing patient records, student information files, open records, criminal investigations conducted by federal, state or local law enforcement authorities or certain personnel actions.

The Ad Hoc Electronic Data Advisory Committee:

Seymour Parter, Professor, Computer Sciences and Mathematics (Chair)
David Brown, Senior Policy and Planning Analyst, Office of Information Technology
Dennis Fryback, Professor, Industrial Engineering and Preventive Medicine
Thomas Palay, Professor, Law
Tad Pinkerton, Professor, Computer Sciences & Director, Information Technology
Charlene Rieck, Information Processing Consultant, College of Agricultural & Life Sciences

[UW-Madison Faculty Document 890a - 7 October 1991]

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REPORT OF THE AD HOC TENURE CLOCK EXTENSION COMMITTEE
As amended 6 February 1995 by the Faculty Senate

Criteria for Policies for Suspension of the Tenure Clock
University of Wisconsin-Madison

Effective March 1, 1994, the UW-System administrative rules were amended to stipulate four circumstances in which the tenure clock could be suspended during the seven year faculty probationary period. (See attachments UWS 3.04 and 3.06.) On February 24, 1994, the System administration directed system institutions to revise their rules or develop policies, as appropriate, to implement the revised administrative code in each university. The policies that appear below are proposed for the University of Wisconsin-Madison.

History

For many years the probationary period for faculty at the University of Wisconsin-Madison was strictly defined in various laws and regulations, with virtually no possibility for alteration. Two equally important arguments underlay establishing such a period with limited flexibility: the first was to protect the faculty member from an indefinite period of service without the protection of academic freedom provided by employment security; the second was to establish a high standard of performance for securing a permanent faculty position, with the expectation that excellence was a function both of the quality and the rate of scholarly productivity. The relatively inflexible probationary period had the further intention of assuring that competitive conditions were similar amongst faculty: one person did not receive a significantly longer period than another to produce work of comparable quality and extent.

In the last two decades, the state, the regents and the faculty have all introduced alterations to the calculation of the probationary period. Many of these changes arose from the recognition that the fairness envisioned in the earlier rules could not reasonably be achieved when members of the faculty were forced to abandon or greatly restrict their research programs by serious illness, childbearing, or adoption, and that a half-time appointee limited to the probationary period of a full time faculty member could hardly be working half time. In addition, following merger, the new UW-System found it necessary to respond to the desires of members of some other system institutions who found the probationary period used at the UW-Madison more restrictive or demanding than met their needs. One major change in the provisions governing the probationary period was incorporated into the merger statute itself. Section 36.13 (2) (d) stipulated a probationary period of seven consecutive years, but also provided--as Madison rules previously had not--that a "leave of absence, sabbatical or a teacher improvement assignment" would not be counted as part of the seven year probationary period, although they did not constitute a break in continuous service.

The Madison faculty adopted revisions to the *Faculty Policies and Procedures* at 7.04 to reflect the changed statutory foundation and to shape the way in which the statute would be applied in this university. The principal provisions of Section 7.04 are:

- the probationary period for a full-time faculty member is seven years, unless decreased by mutual agreement of the candidate and the department and so stipulated in the initial letter of appointment.
- all previous tenure track service, up to a maximum of three years, must be subtracted from the seven year probationary period at the time of appointment. Conversely, a faculty member shall not be compelled to accept a probationary period of less than four years, even if he or she has more than three years prior faculty service.
- part-time service may extend the probationary period, but in no case to a period longer than 12 years.
- an "approved leave of absence" could extend the probationary period;
- and finally, a general purpose "escape clause" was introduced at 7.04.G:
"The maximum probationary period may be extended for an appropriate period by the vice chancellor for academic affairs and provost on the recommendation of the departmental executive committee and the relevant dean, and with the approval of the University Committee."

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In practice, over the subsequent years, both the latter provisions were found to raise issues of consistency of treatment, competitive fairness, and on rare occasions, maintenance of consistently high standards of performance.

The "approved leave of absence" provision was the first to generate significant concern. Interpreted as some viewed it, the provision offered the prospect that those most successful at securing research time through extramural support or adequate personal resources would be precisely the ones to obtain the longest probationary periods, thereby placing less richly supported colleagues at substantial disadvantage.

The faculty responded by establishing (in Section 7.20 of the *Faculty Policies and Procedures*) the category "temporary assignment," which it distinguished from "leave of absence." A "temporary assignment" does not interrupt or extend the tenure clock. Effective 1991-92 academic year, Section 7.20 of the *Faculty Policies and Procedures* stipulated that an approved leave of absence would be granted only when "the faculty member is not paid from funds administered by the university" and when the activity undertaken during the leave "substantially interrupts the ability of the candidate to establish, within the normal probationary period, a record that would warrant the granting of tenure." This section directs that whenever the occasion for the request does not involve a "substantial interruption of the ability of the candidate to establish within the normal probationary period, a record that would warrant the granting of tenure," a "temporary assignment," not a leave of absence, should be granted--whether or not during the period in question the faculty member is compensated by funds administered through the university.

Meanwhile, appeals to the University Committee under the "escape clause" steadily grew. In establishing a committee in spring, 1994, to review the policies on adjustment of the tenure clock, the University Committee acknowledged that such requests had "proliferated" and that "many of these requests represent, in our view, abuse of the rules;" and continued that "we are often forced to balance the need to enforce those rules uniformly with the need to treat equitably all faculty in similar circumstances." The committee found cases in which faculty members had been promised some adjustment of the tenure clock without prior approval and requests on behalf of faculty with prior service or substantial assigned administrative/service duties to be particularly troublesome.

Consequently, when the changes in the UW-System administrative code with respect to the counting of the probationary period became effective March 1, 1994, a need already existed to clarify Madison policy in this area. The newly effective administrative code makes explicit that adjustment of the probationary period can be made in the following conditions, "when those circumstances significantly impede the faculty member's progress toward achieving tenure":

- "responsibilities with respect to childbirth or adoption"
- "significant responsibilities with respect to elder or dependent care obligations"
- "disability or chronic illness," or
- "circumstances beyond the control of the faculty member." [UWS 3.04(3)]

These rules further provide that it is assumed that responsibilities with respect to childbirth or adoption will significantly impede progress toward tenure. Requests for suspension of the clock for up to a year on each such occasion are presumed approved, and may be granted on more than one occasion. Under the other three circumstances, determination must be made, under appropriately specified policies, that the circumstance has significantly impeded progress, and the aggregate length of time granted to any single petitioner "ordinarily shall be no more than one year."

The rules stipulate that a request for a tenure clock extension shall be made before "a tenure review commences under s. UWS 3.06(1)(c)." The referenced statute describes the requirement for written notice of the departmental tenure review. Under normal circumstances this review will occur no later than the beginning of the sixth year.

The issues suggested by this history constitute the matters which these policies are designed to address.

Definitions and Presuppositions

It is assumed that it is the responsibility of departments to appoint faculty whose specializations, prior experience, and assigned responsibilities equip and permit them to compete successfully for tenure within the specified probationary period. Consequently, requests for adjustment of the tenure clock for reasons other than childbearing or adoption should be infrequent.

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Request to adjust the tenure clock is not an appropriate response to failure of departments to follow the written procedures of the University of Wisconsin- Madison appointment system. Relief under this section is ordinarily prospective, not retrospective. This section is not an alternative to faculty grievance procedures which involve a hearing with the University Committee or appeal to Committee on Faculty Rights and Responsibilities. Individual faculty members have recourse, pursuant to the *Faculty Policies and Procedures*, to the Committee on Faculty Rights and Responsibilities when they allege that denial of tenure "was based in any significant degree upon impermissible factors, as defined in UWS 3.08, with material prejudice to the individual." (FPP 7.10)

The normal course of competitive search for grants and for publication results in some decisions which are "beyond the control of the staff member" in some sense. The results of competitive application for grants and contracts are not construed to fall within the meaning of "circumstances beyond the control of the faculty members" under these rules, nor is the decrease of general opportunities for scholarly publication.

Policies

Ordinarily, adjustment of the tenure clock will be justified only by events which cannot reasonably be planned for, and request for adjustment should be made within the year in which the event requiring adjustment occurs or begins to occur. Birth and adoption are time-specific events. In general, request for extension because of "responsibilities with respect to childbirth or adoption" should be made within the year following each birth or adoption. On the occasion of birth or adoption, a faculty member may request a leave of absence OR an adjustment of the tenure clock. One or the other shall be granted upon such request. (Individuals may also apply for extension of the tenure clock if significant responsibilities with respect to dependent care significantly impede progress toward tenure.)

When circumstances unique to the nature of the appointment are asserted to justify adjustment of the tenure clock, request for adjustment must be made at the time of appointment and reflected in the initial letter of appointment. Requests for adjustment must be approved in advance of sending the letter of appointment. Medical School administrative practice allows clinical departments to make an initial appointment as a CHS faculty member and then (within five years) convert the appointment to tenure track. When such a conversion is approved, three of the years as CHS faculty are not counted in calculating the maximum probationary period.

Substantial, mutually agreed upon, changes in research site or focus may be a basis for adjustment of the tenure clock. Such changes must be documented in letters of appointment or reappointment and annual evaluation, and must be consistent with the interests of both the individual and the department. Changes of this type may be an acceptable reason for extension of the tenure clock, provided that adequate documentation is provided and that adjustment is requested prospectively.

Circumstances that will not normally be approved as a basis for extension of the tenure clock include:

1. Departure from the procedures for probationary faculty stated in Chapter 7 of *Faculty Policies and Procedures*.
2. Appeals resulting from failure of the department to follow procedures for guidance and written annual evaluation stated in Section 7.05 of *Faculty Policies and Procedures*.
3. Delays in securing extramural support for research and facilities.

Departments and schools/colleges have the responsibility to ensure the availability of needed resources and facilities for the faculty member to embark on a sustained research program. Appointments and arrival dates should be timed to coordinate with such availability.

It is normal that faculty members will have a lag period before they get started on their research. This does not constitute sufficient reason for extending the tenure clock.

Attachments: UWS 3.04 and 3.06 as revised March 1, 1994

TENURE CLOCK EXTENSION COMMITTEE MEMBERS:

Robert Auerbach
Paul DeLuca
Betsy Draine, ex-officio
Cyrena Pondrom
Jane Voichick, Chair
John Young

[UW-Madison Faculty Document 1110 - 6 February 1995]

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WISCONSIN ADMINISTRATIVE CODE
Rules of
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

UWS 3.04 Probationary appointments.

- (1) Each institution's rules for faculty appointments shall provide for a maximum 7-year probationary period in a full-time position, and may provide for a longer maximum probationary period in a part-time position of at least half time. Such rules may permit appointments with shortened probationary periods or appointments to tenure without a probationary period. Provision shall be made for the appropriate counting of prior service at other institutions and at the institution. Tenure is not acquired solely because of years of service.
- (2) A leave of absence, sabbatical or a teacher improvement assignment does not constitute a break in continuous service and shall not be included in the 7-year period under sub. (1).
- (3) Circumstances in addition to those identified under sub. (2) that do not constitute a break in continuous service and that shall not be included in the 7-year period include responsibilities with respect to childbirth or adoption, significant responsibilities with respect to elder or dependent care obligations, disability or chronic illness, or circumstances beyond the control of the faculty member, when those circumstances significantly impede the faculty member's progress toward achieving tenure. It shall be presumed that a request made under this section because of responsibilities with respect to childbirth or adoption shall be approved. A request shall be made before a tenure review commences under s. UWS 3.06 (1) (c). A request for additional time because of responsibilities with respect to childbirth or adoption shall be initiated in writing by the probationary faculty member concerned and shall be submitted to a designated administrative officer who shall be authorized to grant a request and who shall specify the length of time for which the request is granted. Except for a request because of responsibilities with respect to childbirth or adoption, a request made because of other circumstances under this section shall be submitted to a designated administrative officer who shall be authorized to grant a request in accordance with institutional policies. A denial of a request shall be in writing and shall be based upon clear and convincing reasons. More than one request may be granted because of responsibilities with respect to childbirth or adoption. More than one request may be granted to a probationary faculty member but the total, aggregate length of time of all requests, except for a request because of responsibilities with respect to childbirth or adoption, granted to one probationary faculty member ordinarily shall be no more than one year. Each institution shall develop procedures for reviewing the requests.
- (4) If any faculty member has been in probationary status for more than 7 years because of one or more of the reasons set forth in sub. (2) or (3), the faculty member shall be evaluated as if he or she had been on probationary status for 7 years.

Example: A faculty member has been on probationary status for a total of 9 years because the faculty member was granted 2 requests under sub. (3) for one-year extensions because of the birth of 2 children. The faculty member's teaching, research and professional and public service and contribution to the institution shall be evaluated as if the faculty member had only 7 years to work towards achieving tenure, rather than as if the faculty member had been working towards achieving tenure for 9 years.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; renum. to be (1) and am., cr. (2) to (4), Register, February, 1994, No. 458, eff. 3-1-94.

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UWS 3.06 Renewal of appointments and granting of tenure.

- (1) (a) **General.**
Appointments may be granted only upon the affirmative recommendation of the appropriate academic department, or its functional equivalent, and the chancellor of an institution. When specified by the board, the institutional recommendation shall be transmitted by the president of the system with a recommendation to the board for action. Tenure appointments may be granted to any ranked faculty member who holds or will hold a half-time appointment or more. The proportion of time provided for in the appointment may not be diminished or increased without the mutual consent of the faculty member and the institution, unless the faculty member is dismissed for just cause, pursuant to s. 36.13 (5), Stats., or is terminated or laid off pursuant to s. 36.21, Stats.
- (b) **Criteria.**
Decisions relating to renewal of appointments or recommending of tenure shall be made in accordance with institutional rules and procedures which shall require an evaluation of teaching, research, and professional and public service and contribution to the institution. The relative importance of these functions in the evaluation process shall be decided by departmental, school, college, and institutional faculties in accordance with the mission and needs of the particular institution and its component parts. Written criteria for these decisions shall be developed by the appropriate institutional faculty bodies. Written criteria shall provide that if any faculty member has been in probationary status for more than 7 years because of one or more of the reasons set forth in s. UWS 3.04 (2) or (3), the faculty member shall be evaluated as if he or she had been in probationary status for 7 years.
- (c) **Procedures.**
The faculty and chancellor of each institution, after consultation with appropriate students, shall establish rules governing the procedures for renewal or probationary appointments and for recommending tenure. These rules shall provide for written notice of the departmental review to the faculty member at least 20 days prior to the date of the departmental review, and an opportunity to present information on the faculty member's behalf. The probationary faculty member shall be notified in writing within 20 days after each decision at each reviewing level. In the event that a decision is made resulting in nonrenewal, the procedures specified in s. UWS 3.07 shall be followed.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75; am. (1) (b), Register, February, 1994, No. 458, eff. 3-1-94; correction in (1) (a) made under s. 13.93 (2m) (b) 5, Stats., Register, February, 1994, No. 458.