
As amended and adopted on 1 May 2006

University Committee Resolution Regarding the UW-Madison Faculty's Response to the Regents' Proposed Wisconsin Administrative Code, UWS 7 Procedures for Dismissal of Faculty in Special Cases

Introduction

Prompted by public response to selected cases of faculty and staff disciplinary problems, the University of Wisconsin System regents created a special committee to propose ways to expedite the UWS 4 disciplinary process in exceptional situations. The committee, consisting of three regents, a chancellor, a faculty member, and UW System general counsel, with input from others, drafted an addition to the Wisconsin Administrative Code, the proposed UWS 7, Procedures for Dismissal of Faculty in Special Cases. The proposed rule was presented to the faculty senates across the UW system in Spring 2006. This document represents the UW-Madison faculty response to that proposed rule.

Existing administrative code, UWS 4 and UW-Madison *Faculty Policies and Procedures*, chapter 9, provide ample guidance for handling situations of serious misconduct involving faculty members. In exceptional circumstances, i.e., when a faculty member is charged with, pleads guilty or no contest to, or is convicted of a felony, guidance beyond that provided in UWS 4 and *FPP* 9 is needed for two aspects: clarifying the conditions under which a faculty member may be suspended, and providing for rapid action in a way that both protects the faculty member's right to due process while promoting a safe workplace. The revised provisions of the proposed UWS 7, provided herein, were created by the University Committee with advice from the Faculty Senate and key faculty members, to meet the demand for an expedited process while balancing individual rights with public good.

Chronology

The regents' proposed UWS 7 was presented to the UW-Madison faculty at the March 2006 Faculty Senate meeting, which Regent Michael Spector, chair of the regents' special committee, attended. Through discussion with the Faculty Senate acting as a "Committee-of-the-Whole", faculty input was obtained. Reporting out from the Committee-of-the-Whole, the Faculty Senate directed the University Committee to reject the regents' proposed UWS 7 and propose new language.

The University Committee discussed the proposed UWS 7 language and goals at six of its meetings through March and April, receiving consultation from faculty members, legal counsel, and representatives of TAUWP. The University Committee also met with Regent President David Walsh to refine its understanding of the regents' special committee's deliberations. An interim version of a UW-Madison's revision of the regents' proposed UWS 7 was prepared and summarized at the Faculty Senate in April 2006, with a plan to take action at the May 2006 meeting. At the April 2006 meeting the Faculty Senate directed the University Committee to continue to formulate a revision to the proposed UWS 7 language, restricting its application to only those situations in which a faculty member is charged with a felony. In this regard, the University Committee, in consultation with other faculty, has also included pleading guilty or no contest to, or is convicted of a felony in the revised language. In addition, the University Committee worked with the faculty appointee to the regents' special committee and with individual faculty members to craft the revised version of the proposed UWS 7 provided herein.

Key points of the Revised Version of the Proposed UWS 7

The revised provisions of the proposed UWS 7 are designed to address faculty and university concerns when a faculty member is charged with, pleads guilty or no contest to, or is convicted of a felony. The process outlined in the revised provisions of the proposed UWS 7 is not designed to resolve the initiating complaint; rather, it provides for an expedited approach to addressing faculty suspension from the

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university only in the exceptional case when the individual is charged with, pleads guilty or no contest to, or is convicted of a felony with a nexus to the university. The provisions of UWS 4 address resolution of the initiating complaint, including due process.

Expedited disciplinary procedures would be invoked only when two conditions are satisfied: (1) a faculty member has been charged with, pleads guilty or no contest to, or is convicted of a felony, and (2) the conduct does substantial harm to the university or represents a substantial safety risk to the university. The revised provisions of the proposed UWS 7 would provide for expedited suspension with or without pay, and a process for dismissal when these conditions are satisfied. In all cases, the revised provisions of the proposed UWS 7 are intended to supplement, not replace, the provisions regarding dismissal contained in UWS 4.

The revised version of the proposed UWS 7 provides an escalation of process with the escalation of severity of action. In the event of a felony charge, suspension with pay may be invoked by the chancellor upon consultation with chairs of appropriate faculty committees. Suspension without pay by the chancellor requires determination by an appropriate faculty committee, after a review of the preliminary information, that substantial likelihood exists for a finding for dismissal, and may occur following charges, guilty or no contest plea, or conviction of a felony. Dismissal proceedings would follow the existing procedures contained in UWS 4.

Faculty consultation is required at all points of the process in the revised provisions to the proposed UWS 7. Faculty consultation would be provided by standing committees as provided in UWS 4. Involvement of two different committees would be necessary – one to make a determination regarding suspension with or without pay, and another for the dismissal process. At UW-Madison, the University Committee would be the appropriate body for the suspension determination review, and the Committee on Faculty Rights and Responsibilities would serve in the dismissal process. Thus, a faculty member's rights to a fair and unbiased hearing for dismissal would be preserved.

Resolution:

Whereas, the faculty of the University of Wisconsin-Madison stand in agreement with the board of regents that prompt attention to faculty discipline best serves the state, its citizens, the university, and the faculty member, and

Whereas, the most prudent action to enable prompt attention is likely to arise as an extension of existing legislation, administrative rules, and faculty policies and procedures, and

Whereas, collaboration with many faculty members has resulted in language that best addresses the need to protect the safety and operation of the university when individuals who have committed serious misconduct remain on the job in a way that impairs the function of the university, and

Whereas, the spirit of faculty governance is best addressed through collaborative problem-solving and rule-making with the board and its several faculties of the University of Wisconsin System,

Therefore, be it resolved, that the faculty of the University of Wisconsin-Madison does endorse and send for counsel to the University of Wisconsin System Board of Regents the following amended language to the proposed UWS 7.

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**Amended Proposed Chapter UWS 7, Wisconsin Administrative Code,
Procedures for Dismissal of Faculty in Special Cases**

UWS 7.01 Declaration of policy University faculty members are responsible for advancing the university's missions of teaching, research and public service. The fulfillment of these missions requires public trust in the integrity of the institution. The university's effectiveness and credibility are undermined by felonious conduct that poses a substantial risk to the safety of others, that seriously impairs the public trust in the university or the university's ability to fulfill its missions, or that interferes with performance of the duties of a faculty member. Situations involving such felonious conduct by faculty members must be addressed and resolved promptly to ensure that public trust is maintained and that the university is able to advance its missions. The board and its several faculties therefore adopt the procedures in this chapter for identifying and responding to those instances in which a faculty member has been charged with, has pled guilty or no contest to, or has been convicted of a felony pursuant to the provisions of UWS 7.02.

UWS 7.02 Cause for initiation of suspension or dismissal proceedings in special cases

(1) Proceedings consistent with UWS 4.01 shall be initiated by the chancellor upon receipt of credible information via complaint, self report or public report that a faculty member has been charged with, has pled guilty or no contest to, or has been convicted of those felonies in state or federal court that are based on conduct involving:

- (a) causing serious physical injury to another person
- (b) creating a serious danger to the personal safety of another person
- (c) sexual assault
- (d) theft or criminal damage to property
- (e) stalking or harassment

and that the conduct does substantial harm to the university or represents a substantial safety risk to the university.

(2) If a faculty member is charged with, pleads guilty or no contest to, or is convicted of any felony under state or federal law, he or she will report this fact to the chancellor, so long as such reporting does not violate the faculty member's right against self-incrimination.

UWS 7.03 Rapid response

(1) After commencement of this dismissal procedure, if after consultation with chairs of appropriate faculty committees the chancellor finds that substantial harm to the university or that a substantial safety risk to the university will result if the faculty member is continued in his/her current position, the faculty member may be immediately restricted in some, or relieved of some or all of his/her duties with pay.

(2) Suspension under this section will not exceed 60 days.

UWS 7.04 Expedited process regarding suspension without pay

(1) The chancellor may suspend the faculty member without pay pending a final decision in dismissal proceedings. A faculty member can be suspended without pay in only exceptional circumstances when all of the following conditions are met:

- (a) cause for dismissal as contained in UWS 7.02;

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- (b) an appropriate faculty committee determines that substantial harm or a safety risk to the university may result if the faculty member continues in his or her position;
- (c) an appropriate faculty committee determines, after a review of the preliminary information, that substantial likelihood exists for a finding for dismissal.

(2) Suspension without pay may occur only after attending to the faculty member's right to be heard. This shall be afforded to the faculty member through a proceeding before the appropriate faculty committee to determine whether the conditions in UWS 7.04 (1)(a), (b), and (c) apply. The proceedings under UWS 7.04 must commence within 30 days of the determination that the conditions of UWS 7.02 have been satisfied. The faculty member's rights under UWS 7.04 shall include the following:

- (a) service of a written notice to the faculty member of the proceeding 10 days before the proceeding;
- (b) the right of the faculty member to present a written or verbal response to the appropriate faculty committee.

(3) Suspension without pay continues until resolution under UWS 7.05 is reached or the charges pursuant to UWS 7.02 are dismissed or the faculty member is found innocent.

(4) Should the requirements for suspension without pay not be met, the chancellor may continue the suspension with pay pursuant to UWS 7.03.

UWS 7.05 Dismissal upon guilty plea, no contest plea, conviction of a felony

(1) Guilty plea, no contest plea or conviction of those felonies under state or federal law as referenced in UWS 7.02 may constitute just cause for dismissal of a faculty member, subject to the limitations of Wisconsin Statutes §111.335. Dismissal proceedings upon guilty plea, no contest plea, or conviction of those felonies defined by UWS 7.02 shall be governed by the process specified in UWS 4.01-4.10. A finding for dismissal on these grounds must be based on clear and convincing evidence in the record that the conditions of UWS 7.02 have been met.

(2) These proceedings as governed by UWS 4 shall be initiated within 30 days of guilty plea, no contest plea or conviction of a felony.

(3) Changes to the time frame under this section may be granted by the chair of the faculty hearing body as defined in 4.03 based on circumstances beyond the control of the faculty hearing body.

UWS 7.06. Reimbursement If the dismissal proceedings are resolved in favor of the faculty member, all pay and benefits withheld will be returned to the faculty member, unless, at the conclusion of dismissal proceedings, suspension without pay is determined to be an alternative penalty to dismissal.

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Appendix A

Note: UWS 7.02 Not all felony charges are grounds for faculty suspension and dismissal. UWS 7 is intended to expedite university action to the most egregious forms of faculty misconduct. It is implicit that such felonies have the potential of seriously impairing faculty members' abilities to perform their duties and/or negatively disrupting the work of other faculty, students and staff. This process is intended to address the situation of when a faculty member is charged with, pleads guilty or no contest to, or is convicted of a felony and is not intended to address a complaint or preclude later action under UWS 4.

Note: UWS 7.03 This section follows UWS 4.09, but removes ambiguity about when suspension with pay can occur.

Note: UWS 7.04 For situations of such serious nature where a faculty member is incarcerated or suspended with pay pursuant to UWS 7.03, such that the faculty member cannot continue to meet his/her professional obligations to the state of Wisconsin, suspension without pay should be considered. Substantial harm to the institution may involve safety risk to faculty, students and/or staff, or an economic threat such as in the mismanagement of funds or resources. Because of the potential punitive impact to the faculty member of being denied pay, it is important to balance timely action by the university with the faculty member's right to respond to the charges in his/her defense. Because the magnitudes of suspension without pay versus dismissal are different, the procedures protecting faculty rights are different than those for dismissal in UWS 4. The faculty committee in UWS 7.04 shall be different from the faculty committee specified in UWS 7.05.

Note: UWS 7.05 Dismissal proceedings for faculty members are fully articulated with due process in UWS 4. Included here is the requirement that in the egregious cases defined in UWS 7.02, that dismissal proceedings are initiated as soon as possible