

UW Oshkosh Interim Sexual Violence, Misconduct, and Harassment Policy GEN 1.2(5)

POLICY STATEMENT

The mission of University of Wisconsin Oshkosh is to provide a teaching, learning, and working environment in which faculty, staff, and students can discover, examine critically, preserve, and transmit the knowledge, wisdom, and values that will improve the quality of life for all. To promote these institutional values, UW Oshkosh is committed to creating and maintaining a community environment that is free from sexual violence, misconduct, and harassment.

PURPOSE AND SCOPE OF POLICY

This policy prohibits acts of sexual violence, misconduct, and harassment on university property, at university-sanctioned or university-affiliated events, and where off-campus conduct affects a member of the university community. The university is committed to educating its community and to promptly and effectively responding to and redressing conduct that violates this policy. This policy provides the UW Oshkosh community with information and resources to identify, report, and respond to sexual violence, misconduct and harassment including, sexual assault, sexual exploitation, stalking, and dating and domestic violence. These efforts support the overall missions of UW Oshkosh and the UW System.

This policy applies to:

- A. University sponsored and supported activities held both on and off campus, including those held in other municipalities, states, and nations.
- B. All students while they are on campus or if their off-campus conduct meets any of the following criteria:
 - 1. The conduct constitutes or would constitute a serious criminal offense, regardless of the existence of any criminal proceedings.
 - 2. The conduct indicates that the student presented or may present a danger or threat to the health or safety of self or others.
 - 3. The conduct demonstrates a pattern of behavior that seriously impairs the University's ability to fulfill its teaching, research, or public service missions.
- C. All other members of the University community (including, but not limited to employees, volunteers, visitors, guests, contractors, and third-party vendors) while they are on campus or engaged in activities associated with university sponsored and supported activities.

TITLE IX STATEMENT

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance.

I. Definitions

(See Appendix B).

II. Role and Duties of University Officials and Employees

A. Title IX Coordinator

The duties of the UW Oshkosh Title IX Coordinator are described in the institutional position description. Those duties include:

- receiving all reports of sexual violence, misconduct, and harassment;
- maintaining appropriate records;
- providing or supporting the provision of appropriate education and training for Title IX Personnel;
- overseeing and/or investigating allegations of sexual violence, misconduct, and harassment;
- coordinating the effective implementation of supportive measures in collaboration with Student Affairs and Human Resources Title IX Personnel; and
- ensuring that applicable policies, resources, and other information is up-to-date and disseminated.

The duties of the Title IX Coordinator will be guided by principles of trauma-informed care and ensuring equity and due process for complainants and respondents.

B. Title IX Committee

The Title IX committee at UW Oshkosh meets on a semi-annual basis to:

- discuss policy implementation and revision,
- assess the effectiveness of training and educational and prevention programming,
- identify and address any campus issues; and
- provide a feedback loop.

The following are offices represented on this committee:

- Human Resources

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- Equal Opportunity, Equity & Affirmative Action
- University Police
- Athletics
- Residence Life
- Student Health Center
- Student Counseling Center
- Student Recreation & Wellness
- Dean of Students
- Academic Support of Inclusive Excellence

C. Responsible Employees

UW Oshkosh has designated individuals with the following titles as “Responsible Employees” under this policy: supervisors, all employees that interact directly with students, and all employees that students might reasonably believe have some authority to take action or a duty to report incidents of sexual violence, misconduct, or harassment.

Though not exhaustive, this includes:

- All instructors, including full-time professors, adjuncts, lecturers, assistant lecturers, and any others who offer classroom instruction or office hours to students.
- All advisors.
- All faculty advisors to recognized student organizations.
- All coaches, trainers, and other athletic staff who interact directly with students.
- All student affairs administrators.
- All residence life staff.
- All University Police and contracted security personnel.
- All employees in a supervisory or management role.
- University officials including but not limited to: Chancellors, Provost, Vice Chancellors, Deans, Directors, and Department Heads.
- All employees who work in offices that interface with students.

Responsible Employees are not necessarily “Officials with Authority” to institute corrective measures on behalf of the University. These individuals should be properly trained to do the following:

1. Be familiar with definitions of sexual violence, misconduct, and harassment.
2. Be familiar with this policy and other related policies.
3. Be prepared to respond should an individual report an incident of sexual violence, misconduct, or harassment.
4. Be familiar with resources on campus to which to refer a reporting individual.

D. Official with Authority

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UW Oshkosh has designated individuals with the following titles as “Officials with Authority,” under this policy, as they have the authority to institute corrective measures on behalf of the university. All Officials with Authority are also Responsible Employees.

Though not exhaustive, this includes:

- Chancellor, Provost, Vice Chancellors, and Deans
- Title IX Coordinator
- Dean of Students/Assistant Dean of Students

E. All Employees

Regardless of whether they are a “Responsible Employee” or an “Official with Authority,” all employees are required to comply with the following reporting obligations.

In accordance with this policy, employees who witness an act of sexual assault, or who receive a first-hand disclosure or report of sexual assault from an enrolled student, must report that information to the University Title IX Coordinator or their designee. “Confidential Employees”, described below, are only required to report the occurrence of the sexual assault without any personally identifying information about the complainant or respondent.

All employees must comply with Executive Order 54 which requires that university employees report incidents of child abuse and neglect which they observe or learn of in the course of their employment. Such reports must be personally and immediately made to law enforcement or the county department of social services or human services.

[https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf].

III. Reporting an Incident of Sexual Violence, Misconduct, or Harassment

A. Reporting Options

Those who have been subjected to an incident of sexual violence, misconduct, or harassment have several options for reporting the incident:

1. The individual may elect not to report and choose to seek support from confidential services only. UWO confidential resources are listed below:
 - **UWO Student Counseling Center**, Student Success Center, Suite 240, 920.424.2061
 - **Employee Assistance Program**, 833.539.7285
 - **UWO Student Health Center**, Radford Hall Upper Level, 920.424.2424
2. The individual may report to the University through the Title IX Coordinator by completing the [Official Reporting Form](#), or through the official email address, titleix@uwosh.edu, or by calling the Title IX office, or by visiting the Title IX office.
3. The individual may report information to campus law enforcement:

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- **UWO Police Department**
777 Algoma Blvd., Oshkosh Campus
920.424.1212 | 911 EMERGENCY
- 4. The individual may report information to local law enforcement:
- **City of Oshkosh Police Department**
420 Jackson St., Oshkosh, WI 54901
920.236.5700 | 911 EMERGENCY
- **City of Menasha Police Department**
430 1st St., Menasha, WI 54952
920.967.3500 | 911 EMERGENCY
- **City of Fond du Lac Police Department**
126 N. Main St., Fond du Lac, WI 54935
920.906.5555 | 911 EMERGENCY

Note: An individual may make a report to one or more of the offices or individuals noted above.

Individuals have the option to file a complaint with the **U.S. Department of Education, Office for Civil Rights**: <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

B. Amnesty

Individuals, including complainants, respondents, and witnesses, who have made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing regarding incidents of sexual violence or misconduct generally will not be issued citations by campus law enforcement or subject to disciplinary sanctions for alcohol violations arising out of the same facts and circumstances of the alleged incident unless the institution determines that the violation was egregious, and/or placed the health or safety of any person at risk, and was beyond the amnesty provided by state law.

(See <https://www.doj.state.wi.us/sites/default/files/ocvs/act279/Sexual%20Assault%20Victim%20Amnesty%20What%20You%20Should%20Know.pdf>.)

C. Confidentiality

Individuals, including complainants, who report to any of the offices or individuals noted above, or to any other university employee, except confidential employees or resources as defined in Appendix B, cannot be assured absolute confidentiality. However, information provided in the report and in any subsequent, related proceeding will only be shared with those individuals who have a need to know to fulfill obligations consistent with university policies or laws.

D. Resources and Supportive Measures

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1. Supportive Measures

The university will work with individuals involved in alleged incidents of sexual violence, misconduct, and harassment to undertake appropriate measures to assist in their safety, access, and wellbeing. These measures may include no-contact directives, academic or work modifications, and relocation of living or working space. Supportive measures are available to complainants and respondents.

2. Resources

The university offers a variety of support resources that are available to individuals involved in incidents of sexual violence, misconduct or harassment, including the following:

On-Campus

- **UWO Student Counseling Center**, Student Success Center, Suite 240, 920.424.2061
- **Employee Assistance Program**, 833.539.7285
- **UWO Student Health Center**, Radford Hall Upper Level, Phone: 920.424.2424

Off-Campus

See the UWO Title IX website for a full list of off-campus resources,

<https://uwosh.edu/titleix/support/>.

E. Procedures

1. University Procedures:

1.

- a. When a report is made to the *Title IX Coordinator* alleging that a **student** has engaged in an act of sexual violence, misconduct, or harassment, the procedures linked here apply, https://docs.legis.wisconsin.gov/code/admin_code/uws/17.
- b. When a report is made to the *Title IX Coordinator* alleging that a **faculty member** has engaged in an act of sexual violence, misconduct, or harassment, the procedures linked here apply,
https://docs.legis.wisconsin.gov/code/admin_code/uws/4.
https://docs.legis.wisconsin.gov/code/admin_code/uws/7.
https://docs.legis.wisconsin.gov/code/admin_code/uws/6.

- c. When a report is made to the *Title IX Coordinator* alleging that a *member of the academic staff* has engaged in an act of sexual violence, misconduct or harassment, the procedures linked here apply,

https://docs.legis.wisconsin.gov/code/admin_code/uws/11.

https://docs.legis.wisconsin.gov/code/admin_code/uws/13.

- d. When a report is made to the *Title IX Coordinator* alleging that a *member of the university staff* has engaged in an act of sexual violence, misconduct, or harassment, the procedures in Appendix C of this policy apply.
- e. When a report is made to the *Title IX Coordinator* alleging that **any other university employee** who does not fall into any of the above categories has engaged in an act of sexual violence, misconduct or harassment, the procedures in Appendix C of this policy apply.

2. Title IX Misconduct Informal Resolution Procedures

At any time prior to reaching a determination regarding responsibility for Title IX misconduct, the university may facilitate an informal resolution process that does not involve a full investigation and adjudication process, provided that the university:

- a. Provides to the parties a written notice disclosing:
 - i. the allegations.
 - ii. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations.
 - iii. at any time prior to agreeing to a resolution any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
 - iv. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- b. Obtains the parties' voluntary, written consent to the informal resolution process.
- c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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The University may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Title IX misconduct. Similarly, the university may not require the parties to participate in an informal resolution process to address Title IX misconduct and may not offer an informal resolution process for Title IX misconduct unless a formal complaint is filed. The requirements of this section do not apply to allegations of sexual harassment and sexual violence that do not constitute Title IX misconduct.

3. Law Enforcement Procedures:

1.

- a. When a report is made to campus law enforcement alleging that an individual has engaged in an act of sexual violence, misconduct, or harassment, the procedures linked here apply, <https://uwosh.edu/police/>.
- b. When a report is made to local law enforcement alleging that an individual has engaged in an act of sexual violence, misconduct, or harassment, the procedures in individual police departments apply.
- c. F. Prompt Resolution

The University will endeavor to resolve all Title IX processes in a timely manner, with consideration to available information and context.

1. Time Frames

Best efforts will be made for the University to complete an informal resolution process or an investigation of a complaint within ninety (90) calendar days. The ninety (90) calendar day time frame and any other time frame set by the University related to appeals and conclusion of the grievance process may be extended for good cause. Good cause may include but is not limited to considerations such as:

- the absence of a party or party's advisor or witness
- concurrent law enforcement activity
- the need for language assistance or accommodation of disabilities.

The complainant and the respondent will be notified in writing of an extension for good cause.

2. Potential Sanctions

The procedures identified above provide for disciplinary action against employees and students who are found responsible for violating university policy. For students, such sanctions include those listed in UWS 17. Employee sanctions may include measures that range from a written reprimand through dismissal. Vendors and guests may be subject to other sanctions.

3. Notice of Outcome

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Both the complainant and the respondent will be provided with notice of the outcome of the final resolution.

G. Prohibition Against Retaliation

Prohibited retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Those who believe they have been subjected to retaliation under this section may report the allegations to the Title IX Coordinator. Those who believe they have been subjected to retaliation that would also constitute a crime may report to law enforcement or campus safety office (see contact information above).

H. False Information

Any person who knowingly makes false statements or knowingly provides false information when reporting a violation of this policy or during the course of any investigation or disciplinary proceeding pursuant to this policy may be subject to disciplinary action. The fact that a complaint of sexual violence, misconduct, or harassment did not result in a finding of wrongdoing in a law enforcement or university disciplinary proceeding will not, by itself, be a basis for determining that this provision has been violated.

IV. Education and Training

The Title IX Coordinator will be primarily responsible for facilitating the training and educational programs for the campus community. At a minimum, all students and employees will be required to complete the campus-supported on-line training covering issues of sexual violence, misconduct, or harassment.

The Chancellor or their designee will identify and offer more in-depth training for employees who are Officials with Authority, Responsible Employees, Title IX Personnel, and those connected with any disciplinary process.

All Title IX Personnel, including the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution, shall receive training on the definitions of sexual violence, misconduct, and harassment, scope of the institution's program or activity, how to conduct an investigation and grievance process, how to serve impartially, and how to avoid conflicts of interest and bias. All decision-makers shall receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence. All investigators shall receive training on issues of relevance and how to create an investigative report that fairly summarizes relevant evidence.

V. Record Keeping and Data Collection

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As noted above, the Title IX Coordinator will maintain records of reports and resolution of sexual violence, misconduct, or harassment consistent with the institutional records-retention policy, which must be at least seven (7) years. In addition, the Title IX Coordinator will track compliance with mandatory training programs and maintain a list of training and education offered on campus.

The University will post a link to all training materials for Title IX Personnel, including the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution, whether developed internally or purchased externally, on their website for public viewing. All materials used to train Title IX Personnel will be maintained for at least seven (7) years.

The UW Oshkosh Police Department, or other appropriate office, will collect, maintain, and submit the Annual Security Report, consistent with the federal Clery Act.

The Office of the Dean of Students, or other appropriate office, will collect appropriate data and compile the state report required under § 36.11(22), Wis. Stats.

VI. Assessment

The university will conduct a study that seeks to gather data and information concerning sexual violence, misconduct, and harassment. Efforts will be made to conduct such a study once every five (5) years. All students and employees are encouraged to participate. The Title IX office will also work to design methods for effectively evaluating the outcomes of campus training and educational programming. It is imperative that UW System institutions proactively integrate empirically informed assessment and evaluations into sexual violence, misconduct, or harassment prevention and awareness programs to measure whether they are achieving the intended outcomes.

Appendix B: Definitions

Advisor. An individual who assists a complainant or respondent in any grievance proceeding or related meetings. This individual may or may not be an attorney.

Clear and convincing evidence. Information that would persuade a reasonable person to have firm belief that a proposition is more likely true than not true. It is a higher standard of proof than “preponderance of the evidence.”

Complainant. Any individual who is alleged to be the subject of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy.

Confidential Employee. Any employee who is a licensed medical, clinical, or mental health professional when acting in that role in the provision of services to a patient or client who is a university student or employee. A Confidential Employee will not report specific information

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concerning a report of sexual violence or sexual harassment received by that Employee in the Employee's professional capacity unless with the consent of the reporting individual or unless required by the Employee's license or by law.

Confidential Resource. Individuals or agencies in the community, whose professional license, or certification permits that individual or agency to preserve the confidentiality of the patient or client.

Consent. Words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definitions of sexual assault and sexual exploitation. A person is unable to give consent if the person is in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.

Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin as per ss. 813.12(1)(am) and 968.075, Stats.

Employee. Any individual who holds a faculty, academic staff, university staff, limited, student employment, employee-in-training, temporary, or project appointment. (See, e.g., UW System Administrative Policy 1225 (formerly GEN 0), General Terms and Definitions (<https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/general-terms-and-definitions/>))

Education Program or Activity. For purposes of Title IX misconduct only, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

Executive Order 54. Executive Order issued by Governor Walker in 2011 requiring that university employees report incidents of child abuse and neglect which they observe or learn of in the course of their employment. Such reports must be personally and immediately made to law enforcement or the county department of social services or human services. (https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-54.pdf)

Formal Title IX Complaint. For the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault,

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dating violence, domestic violence, or stalking against a respondent and requesting that the institution investigate the allegations. At the time of filing of the formal Title IX complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, or by electronic mail, or any other method designated by the university. A formal Title IX complaint shall include a physical or digital signature of the complainant or the Title IX Coordinator.

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

Official with Authority. Any official of the university who has the authority to institute corrective measures on behalf of the university.

Office for Civil Rights. The U.S. Department of Education office that is responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other education-based discrimination acts. <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

Preponderance of the Evidence. Information that would persuade a reasonable person that a proposition is more probably true than not true. It is a lower standard of proof than "clear and convincing evidence" and is the minimum standard for a finding of responsibility.

Respondent. An individual who has been reported to be the perpetrator of sexual harassment, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation, as defined in this policy.

Responsible Employee. Any employee (other than a "confidential resource") who has been given the duty of reporting incidents of sexual misconduct by students or employees to the Title IX coordinator or other appropriate school designee.

Retaliation. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured in, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Sex Discrimination. Discrimination on the basis of sex or gender. Sexual harassment and sexual assault are forms of sex discrimination. [See [20 USC §§ 1681-1688](#)]

Sexual Assault. An offense that meets any of the following definitions:

- a. **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- b. **Fondling:** The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the complainant's age or because of the complainant's temporary or permanent mental incapacity.
- c. **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as per s. 944.06, Stats.
- d. **Statutory Rape:** Sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.

Sexual Exploitation. Attempting, taking, or threatening to take, nonconsensual sexual advantage of another person. Examples include:

- a. Engaging in the following without the knowledge and consent of all participants:
 - 1. Observing, recording, or photographing private body parts or sexual activity of the complainant.
 - 2. Allowing another person to observe, record, or photograph sexual activity or private body parts of the complainant.
 - 3. Otherwise distributing recordings, photographs, or other images of the sexual activity or private body parts of the complainant.
- b. Masturbating, touching one's genitals, or exposing one's genitals in the complainant's presence without the consent of the complainant, or inducing the complainant to do the same.
- c. Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.
- d. Inducing incapacitation through deception for the purpose of making the complainant vulnerable to non-consensual sexual activity.
- e. Coercing the complainant to engage in sexual activity for money or anything of value.
- f. Threatening distribution of the following, to coerce someone into sexual activity or providing money or anything of value:
 - 1. Photos, videos, or recordings depicting private body parts or sexual activity of the complainant.
 - 2. Other information of a sexual nature involving the complainant, including sexual history or sexual orientation.

Sexual Harassment. Conduct on the basis of sex that satisfies one or more of the following:

a. *Quid pro quo sexual harassment.*

1. An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct.
2. An employee of the institution either explicitly or implicitly conditions the provision of an academic, professional, or employment-related opportunity, aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

b. *Hostile environment sexual harassment.*

1. Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal "reasonable person" standard, is so severe, pervasive, and objectionably offensive that it effectively denies the person equal access to the institution's education program or activity.
2. Unwelcome conduct of a sexual nature directed towards an individual that, when using the legal "reasonable person" standard, is so severe or pervasive and objectively offensive that it has the purpose or effect of unreasonably interfering with an individual's academic or work performance or participation in a university sponsored or supported activity.

Sexual Violence. The phrase, as used in this policy, refers to incidents involving sexual assault, dating violence, domestic violence, stalking, and sexual exploitation.

Stalking. Engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Student. Any person who is registered for study in a University of Wisconsin System institution for the academic period in which the alleged act of sexual violence or sexual harassment occurred, or between academic periods for continuing students. [See [Chapter UWS 17.02\(14\), Wis. Admin. Code.](#)]

Title IX. Title IX of the Education Amendments of 1972 (20 U.S.C. sec. 1681 et seq.; 34 C.F.R. Part 106)(as amended) is a federal law that states, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." [20 U.S.C. § 1681\(a\).](#)

Title IX Misconduct: A report of sexual harassment or sexual violence under this policy will be considered Title IX Misconduct when a formal Title IX complaint (as defined in this section) is either filed by a complainant or signed by the Title IX Coordinator and the alleged conduct

meets the definition of sexual harassment, sexual assault, dating violence, domestic violence, or stalking as defined in 34 C.F.R. 106.30, occurred within a university “education program or activity” (as defined in this section) and occurred against the complainant while in the United States; and the complainant is participating in or attempting to participate in a university education program or activity at the time they file the formal complaint. Title IX misconduct cases will follow procedures as detailed in Chs. [UWS 4.11-24](#) (faculty), [UWS 11.13-26](#) (academic staff), [UWS 17.16-21](#) (students), and Appendix C (university employees other than faculty or academic staff).

Title IX Coordinator. An employee designated to coordinate compliance with Title IX, who plays an important role in an institution’s efforts to ensure equitable opportunity for all students and employees, and who works with school officials to remind the school community that students and employees must have equal access to all programs.

Trauma-Informed Care. Trauma-informed care reflects an understanding of trauma and emphasizes creating services and programs that are sensitive and directly responsive to the trauma that many victims and survivors experience following a violent crime. Trauma-informed care programs identify and limit potential triggers to reduce their re-traumatization and protect their mental and emotional health. <https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers>.

Violence Against Women Act (VAWA). Federal law enacted in 1994, which promotes the investigation and prosecution of violent crimes against women, among other objectives. Recently, it enacted amendments to the Clery Act [[42 U.S.C. §§ 13701-14040](#)], through the Campus Sexual Violence Elimination Act (SaVE) provision, Section 304.

Appendix C: Policy for Investigation and Resolution of Formal Title IX Complaints Against University Employees Other Than Faculty and Academic Staff

Application of this policy.

This policy applies to the investigation and resolution of formal Title IX complaints filed against university employees other than faculty and academic staff employees. This includes employees who otherwise do not have the right to a formal disciplinary process.

The disciplinary process in Chapter UWS 4 applies to faculty employees and the process in Chapter UWS 11 applies to academic staff employees. The university may discipline an employee up to and including dismissal for cause for Title IX misconduct. The disciplinary process for employee sexual misconduct that is outside the scope of Title IX, and related definitions, are found in separate university policies.

This disciplinary procedure for Title IX misconduct will be used only when all of the following requirements are met:

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1. There is a formal Title IX complaint alleging Title IX misconduct on the basis of sex.
2. The conduct occurred in the United States.
3. The conduct occurred within the university's education programs or activities.
4. The complainant must be participating in or attempting to participate in the education program or activity of the university at the time of filing the formal Title IX complaint.
5. The complainant or Title IX coordinator have submitted a written formal Title IX complaint.

The employee is presumed to be not responsible for the alleged Title IX misconduct until a final decision regarding responsibility is made at the conclusion of the disciplinary process. The university may dismiss or discipline an employee for Title IX misconduct only after due notice and hearing. The burden of proof is on the university administration.

Definitions.

As used in this policy, the following terms shall have the meaning given below:

1. **"Complainant"** means any individual who is alleged to be the subject of Title IX misconduct, as defined in this section.
2. **"Consent"** means words or overt actions by a person who is competent to give informed consent, indicating a freely given agreement to engage in sexual activity or other activity referenced in the definition of sexual assault. A person is unable to give consent if the person is in a state of incapacitation because of drugs, alcohol, physical or intellectual disability, or unconsciousness.
3. **"Consult"** or **"consulting"** means thoroughly reviewing and discussing the relevant facts and discretionary issues.
4. **"Dating violence"** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
5. **"Domestic violence"** means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin as per ss. 813.12(1)(am) and 968.075, Stats.

6. **"Education program or activity"** means, for purposes of Title IX misconduct only, locations, events, or circumstances at which the university exercised substantial control over both the respondent and the context in which the relevant misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.
7. **"Formal Title IX complaint"** means, for the purposes of Title IX misconduct only, a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, sexual assault, dating violence, domestic violence, or stalking against an employee and requesting that the institution investigate the allegations. At the time of filing of the formal Title IX complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, by electronic mail, or any other method designated by the university. A formal Title IX complaint shall include a physical or digital signature of the complainant or the Title IX Coordinator.
8. **"Incapacitation"** means the state of being unable to physically or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.
9. **"Preponderance of the evidence"** means information that would persuade a reasonable person that a proposition is more probably true than not. It is a lower standard of proof than "clear and convincing evidence."
10. **"Respondent"** means an individual who has been reported to be the perpetrator of Title IX misconduct as defined in this section.
11. **"Sexual assault"** means an offense that meets any of the following definitions:
 - a. **"Rape"** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
 - b. **"Fondling"** means the touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent

because of the complainant's age or because of the complainant's temporary or permanent mental incapacity.

- c. **"Incest"** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law as per s. 944.06, Stats.
- d. **"Statutory Rape"** means sexual intercourse with a complainant who is under the statutory age of consent as per s. 948.02, Stats.

12. **"Sexual harassment"** means conduct on the basis of sex that satisfies any of the following:

- a. **Quid pro quo sexual harassment:** When an employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual's participation in unwelcome sexual conduct.
- b. **Hostile environment sexual harassment:** Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal "reasonable person" standard, the conduct is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution's education program or activity.

13. **"Stalking"** means engaging in a course of conduct directed at the complainant that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

14. **"Title IX misconduct"** means sexual assault, stalking, dating violence, or domestic violence as defined in this section and sexual harassment as defined in this section.

Disciplinary Sanctions.

The disciplinary sanctions that may be imposed for misconduct under this policy range from a written reprimand through dismissal.

Dismissal of formal Title IX complaint and related appeal.

- 1. The University shall dismiss formal Title IX complaints consisting of allegations that meet any of the following conditions:
 - a. The alleged conduct would not constitute Title IX misconduct if proved.
 - b. The alleged conduct did not occur in a university education program or activity.
 - c. The alleged conduct did not involve actions against someone physically located in the United States.

2. The University may dismiss formal Title IX complaints under any of the following conditions:
 - a. The complainant formally requests in writing to withdraw the formal Title IX complaint.
 - b. The employee is no longer employed by the university.
 - c. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal Title IX complaint.
3. The University generally shall decide whether to dismiss a formal Title IX complaint within thirty (30) days of receipt of the formal complaint, but the University may extend that timeline, as necessary. If a formal complaint is dismissed, the university shall provide notice of the dismissal and reasons therefore to the employee and complainant in writing.
4. Within twenty (20) days of receipt of the notice of dismissal, the complainant or employee may appeal the dismissal by filing a written appeal with the chancellor's designee (hereinafter "chancellor's designee"). The complainant or employee may appeal on any of the following bases:
 - a. Procedural irregularity that affected the outcome of the matter.
 - b. New evidence that was not reasonably available at the time of the dismissal that could affect the outcome of the matter.
 - c. The university employee making the dismissal decision had a conflict of interest or bias for the employee or against the complainant, or against complainants generally, that affected the dismissal decision.
5. The chancellor's designee shall provide the employee and complainant the opportunity to provide a written statement supporting or challenging the dismissal. The chancellor's designee shall simultaneously issue a decision to the complainant and the employee within thirty (30) days of receipt of a written appeal. The chancellor's designee's decision on the appeal of a dismissal shall be final.
6. The dismissal of a formal Title IX complaint does not preclude the university from otherwise pursuing discipline against the employee under other administrative rules or university policies.

Investigation of Title IX misconduct allegations.

1. Unless the university dismisses a formal complaint, the university shall appoint an investigator to conduct an investigation of the allegations in the formal complaint.

2. The investigator shall provide the employee and the complainant with a notice of investigation. The notice shall include all of the following:
 - a. The grievance process, including informal resolution options.
 - b. The allegations of Title IX misconduct with sufficient detail for the employee to prepare a response to the allegations, including the identity of the complainant as well as the date and location of the incident if available.
 - c. A statement affirming the employee is presumed not responsible for the alleged violation until the disciplinary process finds otherwise.
 - d. The employee and the complainant have the right to an advisor of their choice.
 - e. The employee and the complainant have the right to inspect and review the evidence.
 - f. Information about any code of conduct rules which prohibit the employee or the complainant from knowingly making false statements or submitting false information during the disciplinary process.
3. The parties shall receive an amended notice of investigation any time additional charges are added during the course of an investigation. Formal Title IX complaints involving more than one complainant or respondent may be consolidated if they arise out of the same facts or circumstances.
4. The university's investigator shall do all of the following:
 - a. Provide both the employee and the complainant an equal opportunity to provide witnesses, including fact and expert witnesses who may be interviewed by the investigators and other inculpatory and exculpatory evidence.
 - b. Not restrict the ability of either the employee or complainant to discuss the allegations under investigation or to gather and present relevant evidence.
 - c. Provide the employee and complainant the same opportunity to be accompanied by an advisor of their choice during meetings relating to the investigation but may limit the participation by the advisor so long as those limits are applied equally.
 - d. Provide both the employee and the complainant an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from an employee, complainant, or other source, so that the employee

and complainant can meaningfully respond to the evidence prior to conclusion of the investigation.

5. As part of its investigation and disciplinary process, the university may not access, consider, disclose, or otherwise use an employee's or complainant's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the employee or complainant, unless the university obtains the employee's or complainant's voluntary, written consent to do so in relation to the investigation and disciplinary process.
6. The university's investigator generally shall complete the investigation and issue a final investigative report within ninety (90) days of the investigator's appointment. However, the investigator may extend the investigation's time frame where circumstances warrant.

Review of evidence.

1. Prior to completion of the final investigative report, the investigator shall send to the employee and complainant and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the employee and the complainant. The evidence may be provided in an electronic format or a hard copy. The evidence provided includes evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from the employee, complainant, or other source, to permit the employee and complainant to meaningfully respond to the evidence prior to conclusion of the investigation.
2. The employee and the complainant shall have at least ten (10) days to submit a written response to the evidence. The investigator will consider any written responses prior to completion of the final investigative report.

Final Investigative Report.

The investigator shall create a final investigative report that fairly summarizes relevant evidence and send the report to the employee, the complainant, and their advisors, if any, for their review and response at least 10 days prior to a hearing. The written report shall be delivered simultaneously to the employee and complainant at least ten (10) days prior to a hearing. The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing on the matter. A hearing shall be conducted unless both the employee and the complainant both waive, in writing, the right to such a hearing.

Hearing Examiner or Hearing Committee.

1. The chancellor of each university shall designate a Title IX conduct hearing examiner or hearing committee to hear employee dismissal and discipline cases. The university shall have the right to decide whether the matter will be heard by a hearing examiner or a hearing committee.
2. The hearing committee or hearing examiner shall conduct the hearing, make a verbatim record of the hearing, and transmit such record along with factual findings and decision to the chancellor. The hearing shall be held not later than forty- five (45) days after completion of the final investigative report except that this time limit may be extended by the hearing committee or hearing examiner.

Adequate Due Process.

1. A fair hearing for an employee against whom dismissal or other discipline is sought shall include all of the following:
 - a. Service of written notice of a live hearing on the allegations in the formal complaint at least ten (10) days prior to the hearing.
 - b. A right to the names of witnesses and of access to documentary and other evidence which serve as the basis for seeking dismissal or other discipline.
 - c. A right for the complainant and employee to be heard on their own behalf.
 - d. A right to an advisor, counsel, or other representatives, and to offer witnesses. The employee's or complainant's advisor or counsel may ask all witnesses relevant questions and follow-up questions, including those challenging credibility. Credibility determinations, however, may not be made based on a person's status as a complainant, respondent, or witness. If the employee does not have an advisor, the university shall provide the employee, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the employee. The advisor may be an attorney.
 - e. A right to confront and cross-examine adverse witnesses. The employee's or complainant's advisor shall conduct cross examination directly, orally, and in real time. The employee and the complainant may not personally conduct cross-examination. If the employee, the complainant, or a witness does not submit to cross-examination at the hearing, the hearing committee or the hearing examiner may not rely on any statement of the employee, complainant, or witness in reaching its findings and recommendations. However, the hearing committee or hearing examiner may not draw a negative inference in reaching its findings and recommendations based solely on the absence of an employee,

complainant, or witness from the hearing or refusal to answer cross-examination or other questions.

- f. A verbatim record of all hearings, which might be a sound recording, made available at no cost for inspection and review.
- g. Written findings of fact supporting the decision based on the hearing record. The written findings of fact and decision shall include all of the following:
 - 1. Identification of the allegations potentially constituting Title IX misconduct.
 - 2. A description of the procedural steps taken from the receipt of the formal complaint through the hearing committee's or hearing examiner's decision, including any notifications to the employee and the complainant, interviews with the employee, the complainant, and witnesses, site visits, methods used to gather evidence, and hearings held.
 - 3. Conclusions regarding the application of the university's conduct rules and policies to the facts including the following: a determination regarding responsibility for each allegation and the rationale behind each decision, any disciplinary sanction recommended to be imposed, any remedies recommended to restore or preserve equal access to the university's educational program or activity, and the university's procedures and permissible bases for complainant and employee to appeal.
- h. Admissibility of evidence governed by s. 227.45 (1) to (4), Wis. Stats. Only relevant questions may be asked of the employee, the complainant, and any witnesses. The hearing committee or hearing examiner shall determine whether a question is relevant and explain the decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence are offered to prove that someone other than the employee committed the conduct alleged by the complainant, or unless the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the employee and are offered to prove consent.
- i. Upon the employee's request, the university shall provide for the hearing to occur with the employee and complainant located in separate rooms with technology enabling the hearing committee or hearing examiner, the employee,

and the complainant to simultaneously see and hear witnesses answering questions.

2. The complainant shall have all the rights provided to the employee in sub. (1)(a) to (i) above.

Procedural Guarantees.

1. Any hearing held shall comply with the requirements set forth in the preceding section. All of the following requirements shall also be observed:
 - a. The burden of proof of the existence of just cause to support dismissal, or of grounds to support other discipline, is on the university administration.
 - b. The standard of proof shall be a preponderance of the evidence.
 - c. No employee who participated in the investigation of allegations leading to the filing of a statement of charges, or who participated in the filing of a statement of charges, or who is a material witness, shall be qualified to sit on the hearing committee in that case.
 - d. No university employee or other person who participated in the investigation of allegations leading to the filing of a statement of charges, or who participated in the filing of a statement of charges, or who is a material witness, shall be qualified to serve as the hearing examiner in that case.
 - e. The hearing shall be closed unless the employee requests an open hearing; in which case it shall be open. Note: See subch. V of ch. 19, Wis. Stats., Open Meetings of Governmental Bodies.
 - f. The hearing committee may, on motion of the complainant or the employee, disqualify any one of its members for caused by a majority vote. If one or more of the hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of employees equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures.
 - g. The hearing committee or the hearing examiner may not be bound by common law or statutory rules of evidence and may admit evidence having reasonable probative value but shall exclude immaterial, irrelevant, or unduly repetitious testimony, and shall give effect to recognized legal privileges unless the person holding the privilege has waived it. The hearing committee or the hearing examiner shall follow the evidentiary rules outlined in this appendix.
 - h. If the hearing committee requests, the chancellor shall provide legal counsel after consulting with the hearing committee concerning its wishes in this regard.

The function of legal counsel shall be to advise the hearing committee, consult with them on legal matters, and such other responsibilities as shall be determined by the hearing committee within the provisions of the rules and procedures.

- i. Nothing in this section shall prevent the settlement of cases by mutual agreement between the university administration, the complainant, and the employee.
- j. Delay or adjournment of the hearing for good cause may be granted. Good cause includes any of the following:
 1. The need to investigate evidence as to which a valid claim of surprise is made.
 2. To ensure the presence of the employee or the complainant, an advisor, or a witness.
 3. To provide language assistance or accommodation of disabilities.
 4. To accommodate concurrent law enforcement activity.

Hearing Committee or Hearing Examiner Findings and Recommendations to the Chancellor's Designee.

The hearing committee or hearing examiner shall simultaneously send to the chancellor's designee, to the complainant, and to the employee concerned, within thirty (30) days after conclusion of the hearing, or otherwise as soon as practicable, a verbatim record of the testimony and a copy of its factual findings and recommendations.

Chancellor's Designee's Decision.

1. Within ten (10) days after receipt of the record and findings and recommendations from the hearing examiner or hearing committee, the complainant and the employee may submit written exceptions. The chancellor's designee shall review those materials and their decision shall be based on the record created before the hearing examiner or hearing committee without consideration of any new evidence submitted by the complainant or the employee. The chancellor's designee shall prepare a written decision within twenty (20) days after the deadline of submission for the written exceptions by the complainant or the employee. If the chancellor's designee's proposed decision differs substantially from those recommendations, the chancellor's designee shall promptly consult the hearing examiner or hearing committee and provide the hearing examiner or hearing committee with a reasonable opportunity for a written response prior to making a decision.

2. The chancellor's designee may adopt the hearing examiner's or hearing committee's findings and recommendations as the chancellor's designee's decision. The chancellor's designee shall explain in the decision any substantial differences from those findings and recommendations.
3. The chancellor's designee's decision shall be simultaneously sent to the complainant, employee, and to the hearing examiner or hearing committee within forty-five (45) days of the chancellor's designee's receipt of the hearing examiner's or hearing committee's materials.

Appeal to Chancellor.

1. The employee or complainant may appeal the dismissal of a formal Title IX complaint or the chancellor designee's decision by filing a written appeal with the chancellor within twenty (20) days of receiving the decision.
2. The employee or complainant may appeal to the chancellor on the following bases:
 - a. Procedural irregularity that affected the outcome of the matter.
 - b. New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter.
 - c. The Title IX coordinator, investigator(s), chancellor's designee, or the hearing examiner or hearing committee members had a conflict of interest or bias for or against the employee or complainant, or against complainants and respondents generally, that affected the outcome.
3. The complainant and the employee shall be notified of any appeal to the chancellor.
4. The chancellor shall permit the complainant and employee to file a written statement on the appeal. The chancellor shall review the appeal based on the record before the hearing examiner or hearing committee. The complainant and employee shall be simultaneously provided the final written decision of the chancellor, which shall include the rationale for the decision.

Chancellor's decision.

1. After reviewing the matter on record and considering any arguments submitted by the parties, the chancellor shall issue a decision. The chancellor may adopt the hearing committee or hearing examiner's findings and recommendations as the chancellor's decision. The chancellor shall explain in the decision any substantial differences from those findings and recommendations. If the chancellor's proposed decision differs substantially from those recommendations, the chancellor shall promptly consult the

hearing committee or the hearing examiner and provide the committee or the hearing examiner with a reasonable opportunity for a written response prior to making a decision. In that decision, the chancellor may order dismissal of the employee, may impose a lesser disciplinary action, or may find in favor of the employee. The employee shall be notified of the chancellor's decision in writing. The complainant shall be notified of the chancellor's decision at the same time as the employee. This decision shall be deemed final unless the Board of Regents for the University of Wisconsin System ("board"), upon request of the employee or complainant, grants review based on the record.

2. The chancellor's decision shall be based on the record created before the hearing committee or hearing examiner, and the chancellor shall include the chancellor's rationale in the decision. The chancellor decision shall be simultaneously sent to the employee concerned, the complainant, and to the hearing committee or the hearing examiner within forty-five (45) days of the chancellor's receipt of the hearing committee's or hearing examiner's materials. A decision by the chancellor ordering dismissal shall specify the effective date of the dismissal.

Appeal to the Board of Regents of dismissal of university staff respondent.

1. In matters where a university staff member is the respondent, the university staff member or complainant may file an appeal of the chancellor's decision to dismiss the staff member to the board. Any appeal must be made within thirty (30) days of the date of the decision of the chancellor to dismiss. The board shall provide the university staff member and complainant an opportunity for filing written exceptions to the chancellor's decision, and for oral arguments, unless the university staff member and the complainant waive in writing the right to file exceptions and for oral arguments. The hearing of any oral arguments shall be closed unless the university staff member or the complainant requests an open hearing.
2. The university staff member or complainant may file exceptions to the chancellor's decision, and the board shall conduct its review of the chancellor's decision, on any of the following bases:
 - a. Procedural irregularity that affected the outcome of the matter.
 - b. New evidence that was not reasonably available at the time of the live hearing that could affect the outcome of the matter.
 - c. Conflict of interest or bias for or against the university staff member or complainant, or against complainants and respondents generally, by the Title IX coordinator, investigator, the chancellor, the hearing examiner, or the hearing committee members that affected the outcome.

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3. If the board decides to take action different from the decision of the chancellor, then before taking final action the board shall consult with the chancellor.
4. The board shall make its decision based on the record created before the hearing committee or hearing examiner. Within sixty (60) days of receipt of the chancellor's decision, or otherwise as soon as practicable, the board shall simultaneously notify the university staff member and the complainant of the board's final decision, which shall include the board's rationale for its decision.
5. A decision by the board ordering dismissal of a university staff member shall specify the effective date of the dismissal.

Administrative Leave.

Pending the final decision on the allegations in the formal complaint, the employee/respondent may be placed on administrative leave.

---End of Policy---