

Interim UW-Eau Claire Sexual Violence and Sexual Harassment Policy (Based on Interim Regent Policy 14-2)

Policy Statement

The mission of University of Wisconsin-Eau Claire is to foster in one another creativity, critical insight, empathy, and intellectual courage, the hallmarks of a transformative liberal education and the foundation for active citizenship and lifelong inquiry. In furtherance of our mission, UW-Eau Claire is committed to creating and maintaining a community environment that is free from sexual violence and sexual harassment.

Purpose and Scope of Policy

This policy prohibits acts of sexual violence and sexual 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 respond to and redress conduct that violates this policy. This policy provides the UW-Eau Claire community with information and resources to identify, report, and respond to sexual violence and sexual harassment including sexual assault, sexual exploitation, stalking, and dating and domestic violence. These efforts support the overall missions of UW-Eau Claire 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

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.

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 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 definition of sexual assault and sexual exploitation. A person is unable to give consent if the person is incapacitated 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. (See ss. 813.12(1)(am) and 968.075).

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 at which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurred, 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 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, dating violence, domestic violence, or stalking against a respondent and requesting that the university investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an education program or activity. A formal complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

Incapacitation: The state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; and 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 the definition of rape, fondling, incest, or statutory rape as defined below. [20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).]

- a) **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of 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 their age or because of their temporary or permanent mental incapacity.

- c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (*See Wis. Stat. § 944.06*)
- d) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (*See Wis. Stat. § 948.02*)

Sexual Exploitation: Occurs when an individual attempts, takes, or threatens to take nonconsensual sexual advantage of another person. Examples include, but are not limited to:

- a) Any of the following without the knowledge and consent of all participants:
 - 1. observing, recording, or photographing private body parts or sexual activity of one or more persons
 - 2. allowing another person to observe, record, or photograph sexual activity or private body parts of one or more persons
 - 3. otherwise distributing recordings, photographs, or other images of the same of one or more persons
- b) Masturbating, touching one's genitals, or exposing one's genitals in another person's presence without the consent of that person, or inducing another person to do the same.
- c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual contact or sexual intercourse
- d) Inducing incapacitation through deception for the purpose of making another person vulnerable to non-consensual sexual activity
- e) Coercing another person to engage in sexual activity for money or anything of value
- f) Threatening distribution of any 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 one or more persons
 - 2. Other information of a sexual nature (for example, may include but is not limited to, sexual history or sexual orientation).

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

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

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 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 A (university employees other than faculty or academic staff).

Title IX Coordinator (and Deputies): 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 retraumatization and protect their mental and emotional health. <https://www.justice.gov/ovw/blog/importance-understanding-trauma-informed-care-andself-care-victim-service-providers>. Trauma-informed care is an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma. Trauma-informed care also emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors rebuild a sense of control and empowerment. See also: <http://www.traumainformedcareproject.org/resources/SAMHSA%20TIC.pdf> and http://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_building_cultures-ofcare.pdf. A process that employs trauma-informed care accounts for the impact of trauma but does not recognize symptoms of trauma as evidence that a particular incident did or did not occur.

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.

II. Role and Duties of University Officials and Employees

A. Title IX Coordinator

The duties of the UW-Eau Claire Title IX Coordinator are described in the institutional position description and include receiving reports of sexual violence and sexual harassment, maintaining appropriate records, providing or supporting the provision of appropriate education and training, maintaining ongoing communication with any Deputy Title IX Coordinators and the Title IX Committee, overseeing and/or investigating allegations of sexual violence and sexual harassment, as appropriate, coordinating the effective implementation of supportive measures, and ensuring that applicable policies, resources, and other information is up-to-date and properly 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-Eau Claire meets on a weekly basis to discuss policy implementation and revision, assess the effectiveness of trainings and educational programming, address campus climate issues, and provide guidance to the Title IX Coordinator. The following are offices represented on this committee: Title IX, Dean of Students, Housing and Residence Life.

C. Responsible Employees

UW-Eau Claire has designated individuals with the following titles as “Responsible Employees” under this policy: Chancellor, Vice-Chancellor, Associate Vice Chancellor, Dean, Director, and staff in the following offices: Housing and Residence Life, Dean of Students office, Human Resources office, Affirmative Action Office.

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:

- Be familiar with definitions of sexual violence and sexual harassment.
- Be familiar with this and other related policies.
- Be prepared to respond should an individual report an incident of sexual violence or sexual harassment.
- Be familiar with resources on campus to which to refer a reporting individual.

D. Official with Authority

UW-Eau Claire 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. Titles: Chancellor, Vice-Chancellor, Associate Vice Chancellor, Dean, Director.

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 Wisconsin Statute § 36.11(22), employees who witness an act of sexual assault, or who receive a first-hand report of sexual assault from an enrolled student, must report that information to the Office of the Dean of Students or 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 Wisconsin 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.

III. Reporting an Incident of Sexual Violence or Sexual Harassment

A. Reporting Options

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

1. The individual may elect not to report or may only seek confidential services.
2. The individual may report information to the campus Title IX Coordinator or other designated reporting office: Teresa O'Halloran, ohallote@uwec.edu, 715-836-2387
3. The individual may report information to campus law enforcement: University Police, Non-emergency: 715-836-2222, Emergency: 911
4. The individual may report information to local law enforcement: City of Eau Claire Police, non-emergency: 715-839-4972, Emergency: 911

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 harassment or sexual violence 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 herein, 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

1. Supportive Measures. The university will work with individuals involved in alleged incidents of sexual violence and sexual harassment to undertake appropriate measures to assist in their safety and wellbeing. These 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 resources that are available to individuals involved in incidents of sexual violence or sexual harassment, including the following:
 - Student Health Service: Crest Wellness Center, 150 (715) 836-5360 shs@uwec.edu
 - Counseling Services: Vicki Lord Larson Hall (Old Library) 2122, (715) 836-5521
 - Center for Awareness of Sexual Assault (CASA), Hibbard 311C, (715) 836-4357
casa@uwec.edu

E. Procedures

1. University Procedures:

- a) When a report is made to the Title IX Coordinator alleging that a student has engaged in an act of sexual violence or sexual harassment, the procedures in [Emergency Rule Chapter UWS 17](#) apply.
- b) When a report is made to the Title IX Coordinator alleging that a faculty member has engaged in an act of sexual violence or sexual harassment, the procedures in [UWS 6](#) and in [Emergency Rules Chapters UWS 4 and 7](#) apply.
- 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 or sexual harassment, the procedures in [UWS 13](#) and in [Emergency Rule Chapter UWS 11](#) apply.
- 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 or sexual harassment, the procedures set forth in Appendix A 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 or sexual harassment, the procedures set forth in Appendix A 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, such as mediation, that does not involve a full investigation and adjudication, 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, at any time prior to agreeing to a resolution
 - iii. 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.

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:

a) When a report is made to campus law enforcement alleging that an individual has engaged in an act of sexual violence or sexual harassment, the procedures here apply:

<https://www.uwec.edu/police/>

b) When a report is made to local law enforcement alleging that an individual has engaged in an act of sexual violence or sexual harassment, the procedures here apply:

<https://www.eauclairewi.gov/government/our-divisions/police-department>

F. Prompt Resolution

The university offices and employees that receive a report of sexual violence or sexual harassment will endeavor to resolve the matter 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 timeframe and any other timeframe 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 a 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

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 or Deputy. Those who believe they have been subjected to retaliation that would also constitute a crime may report to campus law enforcement or campus safety office. (See contact information above)

H. False Information

Providing false information to a reporting or investigatory office. 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 harassment or sexual violence 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 and sexual harassment. More in-depth training will be offered for employees who are Officials with Authority, Responsible Employees, Title IX Personnel, and those connected with the disciplinary process.

All Title IX personnel, including the Title IX Coordinator, any investigator, any decisionmaker, and any person who facilitates an informal resolution, shall receive training on the definitions of sexual violence and sexual 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

The Title IX Coordinator will maintain records of reports and resolution of sexual violence and sexual 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 institution 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-Eau Claire Police Department 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

Efforts will be made to conduct a study that seeks to gather data and information concerning sexual violence and sexual harassment once every 3 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 and sexual harassment prevention and awareness programs to measure whether they are achieving the intended outcomes.

Appendix A

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.

The disciplinary procedure in this policy for Title IX misconduct will be used only when all of the following requirements are met:

- (1) There is a formal complaint alleging Title IX misconduct on the basis of sex.
- (2) The conduct occurred in the United States.
- (3) The conduct occurred within a university education program or activity.
- (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 complaint.
- (5) The complainant or Title IX coordinator have submitted a formal 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 incapacitated 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. (See ss. 813.12(1)(am) and 968.075).

(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 sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

(7) "Formal complaint" is 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 university investigate the allegations. At the time of filing of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity. A formal complaint may be filed in person, by mail, or electronic mail, or any other method designated by the university. A formal complaint must include a physical or digital signature of the complainant or the Title IX Coordinator.

(8) "Incapacitation" means the state of being unable to physically and/or mentally make informed rational judgments and effectively communicate, and may include unconsciousness, sleep, or blackouts, and may result from the use of alcohol or other drugs. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; and 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 the definition of rape, fondling, incest, or statutory rape as defined below. [20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).]

(1) 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.

(2) 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 their age or because of their temporary or permanent mental incapacity.

(3) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)

(4) Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)

(12) "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- a) 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) 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 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 harassment, sexual assault, stalking, dating violence, and /or domestic violence.

Disciplinary Sanctions.

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

Dismissal of Formal Complaint and Related Appeal.

(1) The university must dismiss a formal complaint consisting of allegations that:

- a. Would not constitute Title IX misconduct if proved;
- b. Did not occur in a university education program or activity; or
- c. Did not involve actions against someone physically located in the United States.

(2) The university may dismiss a formal complaint when:

- a. The complainant formally requests in writing to withdraw the formal complaint;
- b. The respondent is no longer employed by the university; or
- c. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination on the allegations contained in the formal complaint.

(3) The university generally shall decide whether to dismiss a formal 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, then the university must provide written notice of the dismissal and reasons therefore to the complainant and respondent if notified of the formal complaint. Within twenty days of receipt of the notice of dismissal, the complainant or respondent may appeal the dismissal by filing a written appeal with the chancellor's designee (hereinafter "chancellor's designee"). Dismissal of a Title IX formal complaint does not preclude the university from otherwise pursuing conduct charges against the respondent under other university policies. The appeal process is outlined in the Appeal to Chancellor section below.

Investigation.

(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 complainant and the respondent with a notice of investigation. The notice must include:

- a. The grievance process, including informal resolution options
- b. The allegations of Title IX misconduct with sufficient detail for the complainant or respondent to prepare a response to the allegations, including but not limited to, the identity of the complainant as well as the date and location of the incident(s) if available
- c. A statement affirming the respondent is presumed not responsible for the alleged violation
- d. The complainant and the respondent have the right to an advisor of their choice
- e. The complainant and respondent have the right to inspect and review the evidence
- f. Information about any code of conduct rules which prohibit the complainant and respondent from knowingly making false statements or submitting false information during the disciplinary process.

(3) The complainant and respondent must receive an amended notice of investigation any time additional charges are added during the course of an investigation. Formal 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:

- a. Provide both the complainant and respondent an equal opportunity to provide witnesses (including fact and expert witnesses) who may be interviewed by the investigator, and other inculpatory and exculpatory evidence
- b. Not restrict the ability of either the complainant and respondent to discuss the allegations under investigation or to gather and present relevant evidence
- c. Provide the complainant and respondent 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 complainant and respondent 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 a complainant, respondent, or other source, so that the complainant and respondent can meaningfully respond to the evidence prior to conclusion of the investigation.

(5) As part of its investigation and disciplinary process, the university cannot access, consider, disclose, or otherwise use a complainant's or respondent'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 complainant or respondent, unless the university obtains the complainant's or respondent'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 must send to the complainant and respondent and their respective advisors, if any, the evidence gathered during the investigation for inspection and review by the complainant and respondent. 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 complainant, respondent, or other source, to permit the complainant and respondent to meaningfully respond to the evidence prior to conclusion of the investigation.

(2) The complainant and respondent must 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 an investigative report that fairly summarizes relevant evidence and send the report to the complainant and the respondent (and their advisors, if any) for their review and response at least ten (10) days prior to a hearing. The written report shall be delivered simultaneously to the complainant and respondent.

The university shall, upon receipt of the final investigative report, proceed to schedule a live hearing before a hearing examiner or hearing committee. A hearing shall be conducted unless both the complainant and respondent 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.

(2) The hearing examiner or hearing committee 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 examiner or hearing committee.

Hearing Process.

(1) A fair hearing for a complainant and respondent under this policy shall include the following rights:

- 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 upon the basis of which dismissal or other discipline is sought
- c. A right for the complainant and respondent to be heard on their own behalf
- d. A right to an advisor, counsel, or other representatives, and to offer witnesses. The complainant's or respondent'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 complainant or respondent does not have an advisor, the university shall provide the complainant or respondent, without charge, an advisor of the university's choice to conduct cross-examination on behalf of the complainant or respondent. The advisor may be an attorney.
- e. A right to confront and cross-examine adverse witnesses. Cross examination must be conducted directly, orally, and in real time by the complainant's or respondent's advisor. The complainant and the respondent shall not be permitted to personally conduct cross-

- examination. If the complainant, respondent, or a witness does not submit to cross-examination at the hearing, the hearing examiner or hearing committee must not rely on any statement of the complainant, respondent, or witness in reaching a decision. However, the hearing examiner or hearing committee shall not draw a negative inference in reaching a decision based solely on a complainant's, respondent's, or witness' absence from the hearing or refusal to answer cross-examination or other question.
- 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 and recommendations based on the hearing record. The written findings of fact and recommendations must include:
 - 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 completion of written findings and recommendations, including any notifications to the complainant and the respondent, interviews with the complainant, respondent, 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; a statement of, and rationale for, the result as to each allegation, including recommendations regarding responsibility, any disciplinary sanction recommended to be imposed, and whether remedies designed to restore or preserve equal access to the university's educational program or activity will be provided to the complainant
 - 4. The university's procedures and permissible bases for the complainant and respondent to appeal
 - h. Admissibility of evidence governed by Wis. Stat. § 227.45 (1) to (4). Only relevant questions may be asked of the complainant, respondent, 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 respondent 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 respondent and are offered to prove consent.
 - i. The hearing may be conducted with all participants physically present in the same location, or at the hearing examiner's or hearing committee's discretion, any or all participants may appear at the hearing virtually, with technology enabling the participants simultaneously to see and hear each other. Upon the complainant's or respondent's request, the university shall provide for hearing to occur with the complainant and respondent located in separate rooms with technology enabling all participants to simultaneously see and hear witnesses answering questions.
 - j. The burden of proof to support dismissal, or of grounds to support other discipline, is on the university administration, which shall present witnesses and evidence to meet its burden.
 - k. The standard of proof shall be a preponderance of the evidence
 - l. No employee or other individual who participated in the investigation of the formal complaint, or who is a material witness, shall be qualified to serve as the hearing examiner or on the hearing committee in that case.
 - m. The hearing shall be closed unless the respondent or complainant requests an open hearing; in which case it shall be open (*See Wisconsin Statutes § 19.81 et seq., Open Meetings Law*).

- n. Nothing in this section shall prevent the settlement of cases by mutual agreement between the administration, the complainant, and the respondent.
- o. Delay or adjournment of the hearing for good cause may be granted by the hearing examiner or hearing committee. Good cause includes the need to investigate evidence as to which a valid claim of surprise is made; to ensure the presence of the complainant or the respondent, their advisors, or a witness; to provide language assistance or accommodation of disabilities; and to accommodate concurrent law enforcement activity.

Hearing Examiner's or Hearing Committee's Findings and Recommendations.

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

The complainant or respondent 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. The appeal to the chancellor may be made only on the following bases: procedural irregularity that affected the outcome of the matter; new evidence that was not reasonably available at the time of the hearing before the hearing examiner or hearing committee that could affect the outcome of the matter; the Title IX coordinator, investigator(s), chancellor's designee, or the hearing examiner or hearing committee had a conflict of interest or bias for or against the complainant or respondent, or against complainants and respondents generally, that affected the outcome. The complainant and the respondent shall be notified of any appeal to the chancellor.

The chancellor shall permit the complainant and respondent 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 respondent shall be simultaneously provided the final written decision of the chancellor, which shall include the rationale for the decision.

Discretionary review by the Board of Regents.

The chancellor's decision shall be final, except that the board of regents may, at its discretion, grant a review upon the record, upon written request submitted by the complainant or the respondent within fourteen (14) days of the final university decision.

If the board of regents grants a review upon the record, it will:

- (1) Notify the complainant and respondent in writing and give both the complainant and respondent a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.
- (2) Issue a written decision describing the result of the review and the rationale for the result and provide the written decision simultaneously to both the complainant and respondent.

Administrative Leave.

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