STATE OF WISCONSIN
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 08-099

Agency contact persons: Christopher L. Ashley (608-262-3662)
Jane S. Radue (608-263-4396)
Judith A. Temby (608-262-2324)

Basis and Purpose of the Proposed Rules

Statutes interpreted: Sections 36.11(1), (2) and (8), and 36.35, Stats.

Statutory authority: Sections 36.11(1), (2) and (8), and 36.35, Stats.

Explanation of agency authority: Section 36.35, Stats., authorizes the Board and its designees to discipline students for misconduct, and directs the Board to promulgate rules governing student conduct and procedures for the administration of violations. Sections 36.11(1), (2), and (8), Stats., give the Board of Regents police power over all property owned by the Board, and authority to adopt rules regulating conduct and parking on university lands.

Related statutes or rules: None.

Plain language analysis: As a result of a recent review of ch. UWS 17, relating to student nonacademic misconduct, the board is considering changes in the rules to address issues on campuses and in the broader university community that have arisen since the rules were last significantly revised in May 1996. Specifically, some conduct, such as hazing, falsification of ID cards, and illegal use of alcohol or controlled substances, is not adequately addressed in the current rule. The availability of electronic communications may improve and streamline notice and communication during the disciplinary process by allowing certain notifications to occur electronically rather than solely by personal delivery or first-class mail as currently provided. In addition, it is also desirable to clarify at this time certain terms in the provisions relating to disciplinary sanctions for nonacademic misconduct, including situations in which the misconduct occurs off campus but adversely affects a substantial university interest. The proposed rule also seeks to improve the effectiveness of the disciplinary hearing process, while preserving and protecting students' rights.

Ch. UWS 18 addresses operation of motor vehicles, parking, and other conduct on land under the control of the Board of Regents. The Board proposes several amendments to better organize the chapter, and to clarify the scope of prohibitions related to particular kinds of conduct on campus, such as bicycle riding, selling and soliciting goods and services, smoking within 25 feet of residence halls, using sound-amplifying equipment, and using computers. In the proposed rule,

prohibitions on certain types of conduct are grouped according to categories that will make the rule easier to read and understand.

Copies of the text of the rule may be obtained at no charge from the Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706 or on the internet at http://www.wisconsin.edu/admincode.

Summary of, and comparison with, existing or proposed federal regulations: There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states: Public universities in the adjacent states of Illinois, Iowa, Michigan, and Minnesota each have administrative policies relating to student nonacademic misconduct and conduct on property under the control of the university. Some universities include in their policies the authority to address off-campus misconduct when the conduct affects the university's interests; in adjacent states, these include the University of Illinois at Urbana-Champaign, Southern Illinois University Carbondale, Iowa State University, the University of Iowa, Eastern Michigan University, Western Michigan University, and the University of Minnesota. Additional examples can be found at Indiana University, Ohio State University, Pennsylvania State University, and the University of Washington. Public universities also address municipal law violations in their nonacademic student conduct codes; among these are the University of California-San Diego, the University of Florida, Ohio State University, Pennsylvania State University, and the University of Washington.

Summary of factual data and analytical methodologies: In developing the proposed rules, the University analyzed other public universities' student conduct codes, conducted legal research, and analyzed model student conduct codes.

Analysis and supporting documents used to determine effect on small business: The proposed rules affect only faculty, staff, and students of the University of Wisconsin System, and other persons using University of Wisconsin lands.

Effect on small business: The proposed rules will have no effect on small business.

Responses to Legislative Clearinghouse Recommendations

Various points raised by the Legislative Clearinghouse, in comments 2.a. to j.; 2.l. to r.; 4.a. to c.; and 5.b., c., e., j., m., n., r., w., cc., and dd., have been accepted and incorporated into the revisions to chs. UWS 17 and 18. The following are responses to the remaining questions raised by the Clearinghouse:

Comment 2.k.: In s. UWS 17.14, the phrase, "at its discretion," is unnecessary and should be deleted.

Response: "At its discretion" has not been deleted because it is important to emphasize that the Board must decide in each instance whether to accept an appeal. Also, this phrase is consistent with the parallel appeals provision in ch. UWS 14, "Student Academic Disciplinary Procedures."

Comment 5.a.: Should institutions be required to adopt policies providing for the designation of investigating officers under s. UWS 17.05, as they are required to for the designation of hearing officers under s. UWS 17.06 and hearing committees under s. UWS 17.07?

Response: Section UWS 17.05 has not been modified because designating investigating officers and appointing hearing examiners and committees are not comparable. The investigating officer is typically a member of the Dean of Students office and has investigations as part of his or her job responsibilities, while the hearing examiner or hearing committee members may hold positions in other areas of the institution, with service as a hearing examiner or committee member being an additional responsibility.

Comment 5.d.: Section UWS 17.07 (2) states that the presiding officer and one other member constitute a quorum for any hearing held by a student nonacademic misconduct hearing committee. Should the rule specify that if a committee consists of more than three members, at least a majority of the membership is required for a quorum?

Response: The hearing committee quorum requirements in proposed s. UWS 17.07(2) are unchanged from the current requirements. The rule has not been modified in response to this comment because the requirements are consistent with those of s. UWS 14.15, regarding student academic misconduct hearing committees. In both instances, committees are to consist of at least three persons, including at least one student, and the definition of a quorum is the same.

Comment 5.f.: Section UWS 17.09 (11) would presumably authorize the university to expel a student for making any knowingly false statement regarding a university matter, regardless of the seriousness or impact, or lack thereof, of the student's conduct on the university. This authority seems unnecessarily broad and may have potential for abuse. Could the provision be modified to ensure that sanctions imposed for conduct under this section bear a reasonable relationship to the severity of the offense?

Response: Section UWS 17.09(11) has not been modified as suggested. It is theoretically possible that the university could expel a student for making a knowingly false statement regarding an inconsequential matter; however, it is unlikely that expulsion, the most severe sanction, would be invoked unless the offense is extremely serious. The investigating officer determines the appropriate sanction only after review of the available information with the student, and sanctions for s. UWS 17.09(11) should bear a reasonable relationship to the severity of the offense, just as the sanctions for any of the other offenses under s. UWS 17.09 should.

Comment 5.g.: Should s. UWS 17.09 (13) apply to on-campus violations of municipal law?

Response: The revision suggested by the comment has not been made, because ch. UWS 18, rather than municipal law, applies on campus.

Comment 5.h.: In s. UWS 17.10 (1) (c), "An order to make" should be inserted before "restitution."

Response: "Payment of" has been inserted before "restitution." "An order to make restitution" is typical usage. However, an order to make restitution is usually issued by a court; avoiding the use of "order" keeps the language less legalistic, in keeping with the goal in the current revisions of describing a less legalistic, more educational disciplinary process.

Comment 5.i.: It is unclear what is meant by "service sanctions" in s. UWS 17.10 (1) (d).

Response: Since "service sanctions" are intended to include community service, "including community service" has been added to make this clear. "Service sanctions" were provided as a new sanction option to give conduct officers and hearing examiners and committees the opportunity to craft service-related sanctions that are appropriate to the offense.

Comment 5.k.: Should the rule specify any procedures or standards to be followed by an investigating officer conducting an investigation, other than offering to discuss the matter with the student, under s. UWS 17.11? Also, should the rule establish any standards or policies governing the decision to undertake an investigation?

Response: The description of the conduct officer's conduct of the investigation in s. UWS 17.11 has not been modified, because the current description has not created difficulties. A discussion with the student is an important step to emphasize, because this is the first of several potential opportunities for the student to be heard during the disciplinary process. Standards or policies for deciding to undertake or for conducting an investigation are not needed, because the decision or investigative steps depend entirely on the unique circumstances of the situation, the extent to which witnesses are involved, available evidence, and other considerations, and are appropriately left to the judgment of the investigating officer.

Comment 5.l.: Section UWS 17.11 (1) could describe the specific steps the investigating officer must take to fulfill the requirement to "offer to discuss the matter with the student." The rule could also provide for formal notice to the student of the charges that have been made against him or her and the possible sanctions that could be imposed based on those charges.

Response: This section has been modified to specify that the student may be contacted "in person, by telephone, or by electronic mail." Formal notice to the student of the charges and possible sanctions is provided for in s. UWS 17.11(4)(a).

Comment 5.o.: Section UWS 17.11 (3) (b) should specify the method by which the report must be delivered to the student. Likewise, s. UWS 17.12 (4) (h) should specify how the decision of the hearing examiner or committee should be delivered to the student and s. UWS 17.19 (2) should specify how notification of emergency suspension should be provided to a student. For example, the current rule, in s. UWS 17.06 (4) (h), specifies that the decision must be served on the student either by personal delivery or by first class U.S. mail to his or her current address as maintained by the institution.

Response: The method of delivery of the report, hearing decision, or emergency suspension notification is described in the definition of "delivered," s. UWS 17.02(4).

Comment 5.p.: Section UWS 17.12 (2) should specify the conditions under which a hearing examiner or committee may order or allow a hearing to take place more than 45 days after receipt of a request or written report.

Response: Section UWS 17.12(2) has not been modified because the conditions under which a hearing may take place more than 45 days after receipt of a request or written report vary significantly from case to case. The individual hearing examiner or committee is in the best position to decide about an extended time period, giving consideration to the particular circumstances and the general rule that hearings should take place within 45 days.

Comment 5.q.: The analysis to the rule should explain why the rule eliminates the right of a student to be represented by an individual of his or her choice, as is provided for under current s. UWS 17.06 (4) (a). Instead of allowing a student to be represented, the rule, in s. UWS 17.12 (4) (a), allows a student to be "accompanied by an advisor" and prohibits the advisor from speaking on the student's behalf unless given specific permission to do so by the hearing examiner or committee.

Response: The rule revisions were intended to describe a nonacademic disciplinary process that is educational in nature, with an accused student speaking on his or her own behalf. However, the rule has been modified in response to public comments. Section UWS 17.12(4)(b) has been revised to clarify that the advisor that accompanies a student may be a lawyer. In addition, the rule has been modified to state that in cases in which the recommended sanction is suspension or expulsion, or when the student has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on the student's behalf. In all other cases, the advisor may counsel the student and may question adverse witnesses, present information or witnesses, or speak on the student's behalf at the discretion of the hearing examiner.

Comment 5.s.: Current s. UWS 17.06 (4) (c) states that any party to a hearing may obtain copies of the record of a hearing at his or her own expense. The rule, in s. UWS 17.12 (4) (c), provides instead that the student charged with misconduct "may request access to the record." The rule should specify whether access must be granted. In addition, the rule eliminates a provision in the current rule stating that a party that makes a showing of indigence and legal need may be provided a copy of the verbatim hearing testimony without charge. Why does the rule eliminate this provision? Does the university intend to deny a copy of the record to a student who cannot afford to purchase one?

Response: The Board does not intend to deny a copy of the record to any student charged with misconduct. Section UWS 17.12(4)(d) has been modified to clarify that "[t]he student charged with misconduct may access the record, upon the student's request." Typically, the student would be provided a copy of an audio tape of the hearing, upon request. Given the minimal cost of such a tape, the reference to indigence no longer seems necessary. The student could also listen to the tape without cost.

Comment 5.t.: The analysis to the rule should explain why the rule, in s. UWS 17.12 (4) (e), provides for a lower standard of proof than is provided under the current rule for imposition of suspension or expulsion for sexual harassment or sexual assault.

Response: Section UWS 17.12(4)(f) provides for a lower standard of proof for sexual harassment or sexual assault cases because of a U. S. Department of Education Office for Civil Rights letter ruling interpreting Title IX of the Civil Rights Act of 1964; the ruling supports application of a preponderance of evidence standard in student misconduct cases involving sexual harassment and sexual assault.

Comment 5.u.: The analysis to the rule should explain why the rule narrows the authority of the Board of Regents to review cases of nonacademic misconduct. Under the current rule, the Board has authority to review any case of student nonacademic misconduct (s. UWS 17.08). The rule limits the Board's review authority to cases in which suspension or expulsion is imposed (proposed s. UWS 17.14).

Response: Section 17.14 has been modified to retain the Board's authority to review any case upon appeal, pursuant to the Bylaws of the Board of Regents.

Comment 5.v.: Section UWS 17.14 should specify the time frame in which the Board must either reach a decision on a case it has agreed to review or notify the parties that it has denied the review request.

Response: The Board intends to address any appeal requests promptly and as early as practicable. Section UWS 17.14 does not include a time frame for response because the parallel provision in s. UWS 14.10, which covers appeals to the Board of Regents in academic misconduct cases, does not include a time frame.

Comment 5.x.: Current s. UWS 17.10 denies graduation privileges to a student who is subject to, or may be subject to, the following sanctions: restitution, removal from a course in progress, probation, suspension, or expulsion. The rule, in s. UWS 17.16, would also deny graduation privileges to a student who is subject to, or may be subject to, a written reprimand or denial of specified university privileges. Under this provision, when would a student who has received a written reprimand and would otherwise be eligible to graduate be awarded a degree? The rule prohibits the university from awarding a degree to a student who is subject to any disciplinary sanction, so presumably, unless the written reprimand were rescinded, the student would never be allowed to graduate. Also, the rule should specify when a student who is subject to an order to make restitution would be awarded a degree.

Response: Section UWS 17.16 has been modified to clarify that "pendency of the sanction" refers to continuing sanctions or unresolved disciplinary proceedings. The revision was intended to be a simplification; if charges are pending, or a sanction is still in effect, a degree should not be awarded. A reprimand, for instance, as a one-time action, would not subject the student to an ongoing sanction, and the degree should be awarded. On the other hand, if a student has been charged with misconduct close to the time of graduation, the matter should be fully addressed before the degree is awarded.

Comment 5.y.: Section UWS 17.17 states that, on a student's transcript, suspension should be "noted only for the duration of the suspension period." Does this mean that once the suspension has expired, the transcript should no longer contain any notation regarding the suspension?

Response: The suspension notation is removed once the suspension period has expired. If necessary, a student can request the removal at the appropriate time.

Comment 5.z.: The first sentence of s. UWS 17.18 should clarify that a student may enroll without having to file a petition when the suspension has expired by its own terms under s. UWS 17.17 (1). In addition, should the rule contain time limits similar to those in the current rule, which provide that a suspended student may not petition for readmission until one-half of the suspension period has elapsed, or until one year after the final determination in an expulsion case?

Response: Section UWS 17.18 of the proposed rule has been modified to clarify that a student need only file a petition if the suspension has not already expired. The time limits in the current rule were confusing; circumstances vary, and the proposed rule allows each petition to be considered on its own merits.

Comment 5.aa.: Should s. UWS 17.19 (1) (a) state that if a student has agreed to discuss a matter, an emergency suspension may not be imposed until after the discussion has taken place?

Response: Section UWS 17.19(1)(a) has not been modified; if the discussion with the student is delayed, but the danger posed by the student's continued presence is imminent, the chancellor must have the authority to impose the emergency suspension before the discussion takes place. The proposed rule is intended to address the unusual situation in which a student's presence on campus would constitute a potential for serious harm to the student or others, pose a threat of serious disruption of university-run or university-authorized activities, or constitute the potential for serious damage to university facilities or property.

Comment 5.bb.: The analysis to the rule should explain why the rule, in s. UWS 17.19 (2), eliminates the right of a student to request a hearing prior to imposition of an emergency suspension, which is currently provided in s. UWS 17.17 (2).

Response: Although current s. UWS 17.17(2) refers to the student's "opportunity to be heard," in practice this has been interpreted to mean "opportunity for discussion," rather than "opportunity for a hearing." Proposed s. UWS 17.19 reflects the practice of offering an opportunity for discussion. A student who is subject to an emergency suspension has the right to a hearing within 21 days of the imposition of the emergency suspension, unless the student agrees to a later date.

Note: Section 27 of the Text of the Rule incorporates a technical change to restore a reference to s. 18.06(22)(c), which was inadvertently omitted from the Rulemaking Order.

Public Hearing and Comment Summary

The Board of Regents held a public hearing on March 5, 2009 at 7 p.m. in the Zelazo Center, 2419 E. Kenwood Blvd., Room 280, in Milwaukee. The following people registered and provided testimony. All testimony pertained to ch. UWS 17. A number of those who registered in opposition objected to only a portion or portions of the rule.

Public hearing testimony	
In support of ch. UWS 17:	**In opposition to ch. UWS 17:**
1. Kay Baldwin, UW-Milwaukee neighbor	1. Aaron Brewster, UW-Eau Claire student (also delivered petition from students)
2. J. Gerard Capell, Milwaukee, Murray Hill Neighborhood Association	2.Kirk Cychosz, UW-Stevens Point student
3. Ervin Cox, UW-Madison Dean of Students Office (also written comments)	3. Matthew Dale, UW-River Falls student
4. Marty Collins, UW-Milwaukee neighbor	4. Lizeht Delatorre, UW-River Falls student
5. Cate Deicher, UW-Milwaukee senior lecturer, alumnus, neighbor, parent of student	5. Kyle Duerstein, UW-Milwaukee student (also written comments)
6. Pamela Frautschi, UW-Milwaukee neighbor (also written comments)	6. Omer Farooque, United Council of UW Students
7. Dan McCotter, Milwaukee, block captain, Murray Hill Neighborhood Association	7. Spencer Gansluckner, UW-River Falls student senator
8. Jennifer Oechsner, representing State Senator Jeff Plale (also written comments)	8. Matt Guidry, UW-Stevens Point student government (also written "Student Defense Resolution")
9. Kelley Salas, UW-Milwaukee student and neighbor	9. Chad Johnson, UW-Milwaukee student
10. Jerry Seigmann, UW-Milwaukee neighbor	10. Adam Kissel, Philadelphia, PA, Foundation for Individual Rights in Education (also written comments)
11. Paul Stafford, UW-Milwaukee alumnus, neighbor, landlord	11. Sam Koller, UW-Milwaukee student
12. Fred Stolz, UW-Milwaukee neighbor	12. Tyler Kristopeit, UW-Milwaukee student and neighbor, UW-Milwaukee Student Association
13. Eric Waldron, UW-Milwaukee neighbor and landlord, Historic Water Tower	13. Michael Moscicke, Madison, United Council of UW Students (also written comments)
14. Hope Winship, Madison, representing State Representative Jon Richards (also written comments)	14. Alex Nelson, UW-River Falls
	15. Ben Plunkett, River Falls, County supervisor, Pierce County
	16. Dan Posca, UW-Waukesha student government president
	17. Adam Roberts, UW-River Falls student

	18. Etheleen Rogers, Milwaukee
	19. Emma Sonney, UW-Milwaukee Student Association

The following registered at the hearing, but did not testify:

Registrations	
In support of ch. UWS 17:	**In opposition to ch. UWS 17:**
1. David Allen, UW-Milwaukee neighbor, Murray Hill Neighborhood Association	1. Melody Firkus, Milwaukee (also concerned about mopeds in ch. UWS 18)
2. Gregory Francis Bird, Milwaukee	2. Joshua Hooten, Milwaukee
3. Andrew Davis, representing State Senator Alberta Darling (also written comments)	3. Stephen Jansen, UW-Whitewater student government (also written comments)
4. Stanley Harrison, Milwaukee, Mariners Neighborhood Association	4. Nicole Juan, Madison, United Council of UW Students
5. Richard Ippolito, Milwaukee	5. Ellen Leedle, UW-Eau Claire
6. Karen Sturm, Milwaukee, landlord and homeowner	6. Cassie McClusky, UW-Waukesha
	7. Courtney Parker, UW-Eau Claire
	8. Emilie Rabbitt, UW-Milwaukee student and community member
	9. Lauren Roedl
	10. Tazzaleen Rogers, Milwaukee
	11. Adam Vanderwerff, UW-Waukesha
Neither for nor against:	
Alana Soehaptono, Milwaukee	

In addition, the Board of Regents allowed written public comments to be submitted through March 13, 2008. The following groups and individuals submitted written comments. (Those who both testified at the hearing and submitted written comments are included in the list of those who testified.)

Written comments	
In support of ch. UWS 17:	**In opposition to ch. UWS 17:**
1. Michael and Amy Amoroso, UW-Milwaukee neighbors	1. Lauren Crane, UW-Madison, Biological Aspects of Conservation, Legal Studies
2. Matt Kiederlen, Chief, UW-Whitewater Police Services (also supporting ch. UWS 18)	2. Jordan Dennison, UW-Madison
3. Michael J. Maher, Village of Shorewood trustee	3. Donald A. Downs, Committee for Academic Freedom and Rights, with Adam Kissel, Foundation for Individual Rights in Education
4. Faith Mondry, UW-Milwaukee neighbor, law enforcement officer	4. Alex Halverson, UW-River Falls alumnus
5. Ron Schneider, UW-Milwaukee neighbor	5. Jordan Harshman, UW-River Falls student
6. Mike Speich, Milwaukee	6. Katelyn Larsen, UW-La Crosse, Chief

	Justice, Student Association student court, and other justices
7. Jennifer Tamsen, UW-Milwaukee neighbor, alumnus	7. Kyle Olsen, UW-Madison student, Wisconsin Hoofers President
	8. Teresa Pollock, UW-River Falls student
	9. Jori Sigler, UW-Oshkosh Student Association Vice President
	10. Dan Walters, UW-Madison
	11. Christopher Warneke, UW-Madison student
	12. Joshua Wiensch, UW-Madison student
Other:	
Regent Colleene Thomas and Professor Howard Schweber (specific ch. UWS 17 comments)	
Daniel Einstein, UW-Madison Lakeshore Nature Preserve (specific ch. UWS 18 comment)	

Public comments and responses are organized as follows:

1. General public comments about ch. UWS 17.
2. Municipal violations.
3. Substantial university interest.
4. Hearing committee.
5. Representation at hearing.
6. Chancellor's discretion upon appeal.
7. Appeal rights.
8. Level of evidence.
9. Award of degree
10. Other revisions as a result of the public comment process.

1. General public comments about ch. UWS 17	
In support: The tools in Chapter 17 are a good compromise and will help the university address neighborhood concerns and address the small percentage of students who engage in disruptive behavior.	**In opposition**: The rules have the potential to adversely affect students' lives. The rules should respect students' rights.
Agency response: Language has been added to the ch. UWS 17 policy statement to emphasize that the University respects students' constitutional rights, and that nothing in ch. UWS 17 is intended to restrict students' constitutional rights to freedom of speech and peaceable assembly.	
2. <u>Municipal violations</u>: Proposed s. UWS 17.09(13) prohibited "serious or repeated off-campus violations of municipal law" IF the conduct affects a substantial university interest under s. UWS 17.08(2).	

Public comments in support:	Public comments in opposition:
The university should have the authority to hold its student body accountable for actions within the communities that host UW facilities. Responsible students have nothing to fear from the changes.	Penalizing students for municipal violations should be the responsibility of local law enforcement. The addition of municipal violations could hurt a student's career.

Agency Response:

In response to concerns about the proposed off-campus misconduct provision, proposed s. UWS 17.09(13) has been modified to require that off-campus municipal violations be both serious and repeated. The rules provide the university with an important tool for addressing off-campus misconduct, while at the same time setting forth analytical steps that protect students from inappropriate charges or findings of misconduct:

Step 1: If a municipal violation comes to the attention of the university's conduct officer, it must be both "serious and repeated" to be considered a violation of ch. UWS 17.

Step 2: Since the violation occurred off campus, the conduct officer must determine whether the conduct affects a substantial university interest under s. 17.08(2).

Step 3: A conduct officer must consider whether the conduct meets one of several conditions. The two conditions most likely to apply in the case of a municipal violation are that the student presented a danger or threat to the health or safety of himself, herself or others [s. UWS 17.09(2)(b)], or that the conduct demonstrated a pattern of behavior that seriously impairs the university's ability to fulfill its teaching, research, or public service missions [s. UWS 17.09(2)(c)]. In the application of (2)(c), a pattern and serious impairment must be present.

Step 4: After considering charges under ch. UWS 17, the university conducts an investigation. If, after the considerations above and the investigation, a conduct officer decides proceedings under Chapter 17 are warranted, a student has a minimum of two opportunities to be heard – in a discussion with the investigating officer, and at a disciplinary hearing. The student may dispute, among other things, whether the off-campus conduct affected a substantial university interest, rose to the level of a pattern, or caused serious impairment to the university's missions.

Among the public universities that have incorporated in their nonacademic student conduct codes the authority to address violations of municipal law are the University of California-San Diego, the University of Florida, Ohio State University, Pennsylvania State University, the University of Washington, as well as public universities in Texas.

3. **Substantial university interest: Under s. UWS 17.08(2), Chapter UWS 17 may apply to the student conduct described in s. UWS 17.09 that occurs outside of university lands only when, in the judgment of the investigating officer, the conduct adversely affects a substantial university interest. In determining whether the conduct adversely affects a substantial university interest, the investigating officer is to consider whether the conduct meets one or more of several conditions.**

Public comments in support:	Public comments in opposition:
It is a legitimate instructional interest to protect the university's good name and reputation in the community. The rules strike a reasonable balance.	Students should not have to fear abuse of power. The language is vague. Off-campus behavior is private and should be left to existing legal channels to address.

Agency Response:

It is well understood that public universities have the authority to address off-campus misconduct. It is important to retain the concept of "substantial university interest," because this concept is intended to ensure that off-campus misconduct is subject to Chapter 17 only when it affects the university. The concept is adapted from other universities' student conduct codes, as well as a model student conduct code. A conduct officer uses discretion and judgment in any case, whether on or off campus. When a conduct officer learns of off-campus misconduct that would be subject to discipline had it occurred on campus, the substantial university interest test ensures the conduct officer considers the adequacy of the connection between the conduct and the university.

Among the other public universities that have incorporated in their student conduct codes the authority to address off-campus nonacademic misconduct when the conduct affects the university's interests are the University of Illinois at Urbana-Champaign, Southern Illinois University Carbondale, Indiana University, Iowa State University, the University of Iowa, Eastern Michigan University, Western Michigan University, the University of Minnesota, Ohio State University, Pennsylvania State University, and the University of Washington.

4. **Hearing committee: Under s. UWS 17.12(1), as proposed, if a student requested a hearing to contest the determination that nonacademic misconduct occurred and/or the choice of disciplinary sanction(s), the hearing would be scheduled before a nonacademic misconduct hearing examiner except when the sanction is enrollment restrictions on a course or program, suspension, or expulsion; in the case of these more serious sanctions, the student had a choice between a hearing examiner or committee. The hearing committee would include at least one student.**

Public comments in support:	**Public comments in opposition**:
Students do not have the maturity to make decisions about judging other students.	Having students as part of the committees makes the process more educational. The revisions do not guarantee that a student representative is present.

Agency Response:

The rule has been modified to return to the current language, which gives a student the right to decide between a hearing examiner and hearing committee, regardless of the recommended sanction. The hearing committee composition for hearings under chs. UWS 14 and 17 is consistent.

5. **Representation at hearing: Proposed s. UWS 17.12(4) provided the student the right to be accompanied by an advisor of the student's choice. This advisor would be allowed only to counsel the student and not to speak on the student's behalf, except at the discretion of the hearing examiner or committee. Section UWS 17.12(4) also indicated that the hearing examiner or committee may observe recognized legal privileges.**

Public comments in support:	**Public comments in opposition**:
It is standard practice to have no right to active representation at hearing. Concern about due process is more of a lack of faith in the system.	Students should be allowed representation, because most students do not know their rights. Due process requires that similar cases be treated similarly. The right to have recognized legal privileges should not be optional.

Agency Response:

Hearings sometimes become overly adversarial and legalistic, and current literature on student discipline promotes the view that disciplinary proceedings should be educational in nature, rather than court-like. However, in response to concerns that were expressed, s. UWS 17.12(4) is being modified to make explicit the Board's intent that a student's advisor at a hearing may be a lawyer and to state that the hearing examiner or committee shall observe recognized legal privileges.

The revised rule also describes the role of the advisor. In cases in which the recommended sanction is suspension or expulsion, or when the student has been charged with a crime in connection with the same conduct for which the disciplinary sanction is sought, the advisor may question adverse witnesses, present information and witnesses, and speak on the student's behalf. In all other cases, the advisor may counsel the student and may question adverse witnesses, present information or witnesses, or speak on the student's behalf at the discretion of the hearing examiner.

6. **<u>Chancellor's discretion upon appeal</u>: Under s. 17.13(2), the chief administrative officer may remand an appealed matter for consideration by a different hearing examiner or committee, or may invoke an appropriate remedy of his or her own, if the chief administrative officer finds that: (1) the information on the record does not support the findings or recommendations of the hearing examiner or committee; (2) established procedures were not followed by the hearing examiner or committee and material prejudice resulted; or (3) the hearing decision was based on factors proscribed by state or federal law regarding equal educational opportunities.**

Public comments:

The chief administrative officer should not be able, upon a student's appeal, to "invoke an appropriate remedy" of his or her own. [17.13(2)] This discretion opens the door to failures of due process. Chancellors are busy and do not have a great deal of time to assess a disciplinary case.

Agency Response:

Chapter 36 gives chancellors broad and significant responsibilities; the level of discretion upon appeal is consistent with those responsibilities. The language regarding appeals to the chancellor is largely consistent with ch. UWS 14, "Student Academic Disciplinary Procedures," except that ch. UWS 17 allows an appeal in the case of enrollment restrictions on a course or program, in addition to an appeal in the case of suspension or expulsion. However, some language in s. 17.13 is being modified to improve the precision of the language and to use less legalistic language.

7. **<u>Appeal rights</u>: Proposed s. UWS 17.14 allowed for an appeal to the Board of Regents when a student has been suspended or expelled and the student's appeal to the chief administrative officer under s. UWS 17.13 has been unsuccessful.**

Public comments:
Appeals to the Board should be allowed for all sanctions.

Agency Response:
While it is reasonable to limit the appeals that go to the Board of Regents, returning to the current rule language would address concerns in this area. Modifications to the proposed rule would allow any case to be appealed to the Board, and the Board, pursuant to the Bylaws of the Board of Regents, decides whether to consider the appeal. This is consistent with students' appeal rights and the Board's discretionary review under ch. UWS 14.

8. <u>Level of evidence</u>: Under the proposed rule, a hearing examiner's or committee's finding of nonacademic misconduct must be based on the university's presentation of a preponderance of the evidence in all cases of alleged sexual harassment or sexual assault. For other cases, the evidentiary standard is preponderance of the evidence for less serious sanctions and clear and convincing evidence for the most serious sanctions.

Public comments:
A "preponderance of the evidence" standard in cases of sexual harassment and sexual assault is too low a standard, particularly in cases in which the alleged misconduct arises from student speech, which is protected under the First Amendment.

Agency Response:
The rule provides for a lower standard of proof for sexual harassment or sexual assault cases because a U. S. Department of Education Office for Civil Rights letter ruling interpreting Title IX of the Civil Rights Act of 1964 supports application of a preponderance of evidence standard in student misconduct cases involving sexual harassment and sexual assault. Section UWS 17.12(4) has been modified to make clear that the evidentiary standards apply regardless of who presents the evidence.

9. <u>Award of degree</u>: The proposed s. UWS 17.16 stated that a student who is under disciplinary charges or who is subject to a disciplinary sanction is not to be awarded a degree during the pendency of the sanction or disciplinary proceeding.

Public comments:
"It makes sense that no degree would be awarded if charges are pending. Most conduct cases are adjudicated within a couple of weeks. Unless the student has a specific sanction due (community service, research paper, etc.) from an earlier misconduct case, then the degree should be awarded."

Agency Response:
Section UWS 17.16 has been modified to make clear that "pendency of the sanction" refers to a sanction that is continuing or disciplinary charges that are unresolved at the time of commencement. The proposed language was intended to be a simplification -- if charges are pending, or a sanction is still in effect, a degree should not be awarded. A reprimand, for instance, would not be ongoing, and the degree should be awarded. On the other hand, if a student has been charged with misconduct close to the time of graduation, the matter should be fully addressed before the degree is awarded.

10. Other revisions as a result of the public comment process.

The Board received suggestions for wording changes in various other sections of chs. UWS 17 and 18, resulting in the following modifications: