

MEMORANDUM

April 11, 1988

TO: Dean of Students Mary Rouse  
Associate Dean of Students Roger Howard  
Attorney Michael Liethen  
Steven Saffian for Academic Staff  
Jim Siy for Wisconsin Student Association

FROM: Student Conduct Policy Committee

We are sending you for your information three documents: a statement of principles of nondiscrimination, our recommended changes in UWS17, and a copy of our memorandum to the University Committee containing motions that the Faculty Senate adopt the statement and policy changes.

The Student Conduct Policy Committee was charged on February 9 by Chancellor Shalala with writing a "succinct statement of the University's concept of and aspirations for a non-discriminatory, multi-racial and multi-cultural community". We were also asked to propose strategies for publicizing the statement. Further, we were asked to consider the feasibility, articulation, and implementation of a "policy of seeking enhanced or special student disciplinary sanctions (which) might serve to make more emphatic the seriousness with which the University views offenses which are committed because of the victim's race, religion, color, creed, disability, sex, sexual orientation, national origin, or ancestry".

We propose to publicize the statement on non-discrimination widely, assuming it wins the endorsement of the three University governing bodies. We will be coordinating this with the Dean of Students' efforts in the same direction, and welcome suggestions for publicity beyond *Wheat and Chaff*, the housing handbook, the Bulletins, SOAR brochure, posters, newspapers. The proposed changes in our Madison implementation of UWS 17.06, 17.07, and 17.09 will be of interest to all of you. Since there are several legal fine points in the new parts of Chapter 17, someone from your office should be briefed on the wording, which has been done with extreme care and much advice from both faculty and research students from the Law School.

FACULTY

Carin Clauss, CoChair  
Bernice Durand  
Jack Ladinsky  
Nellie McKay  
James Moy  
Bud Schlack, CoChair

STUDENTS

Steven Anich  
Anne-Marie Bielinski  
Amy de Jesus  
Troy Gates  
Robert Scherb

EX-OFFICIO

Peggy Miezio

Chancellor Donna Shalala  
Vice Chancellor Bernard Cohen  
Associate Vice Chancellor Phillip Certain  
University Committee  
Secretary of the Faculty Susan Finman

# MEMORANDUM

April 11, 1988

TO: The University Committee

FROM: The Student Conduct Policy Committee

SUBJECT: Two Resolutions for the May 2, 1988, Faculty Senate Meeting

1. Motion by Student Conduct Policy Committee: We move adoption of the document "UW Principles of Nondiscrimination, 1988" contained in Faculty Document XXX.

Supporting statement: This statement is a strong, positive statement of principle, which sets the tone for newly-written policy addressing issues of concern in student conduct.

The accompanying quotations in turn set the tone of this statement as a reaffirmation of purpose of UW. Many students are ignorant of even the "sifting and winnowing" statement. We believe that the juxtaposition of our heritage with our new resolve strengthens the message of both. This statement will be widely publicized, included in student handbooks, etc.

2. Motion by Student Conduct Policy Committee: We move adoption of the additions to Chapter UWS17 contained in Faculty Document XXX. These include 17.06(1)(b)4, 17.06(1)(g), 17.06(1)(h), 17.07(2) and (2)(c), 17.07(3)(a), 17.07(7), and 17.09(4)(c)2. In all cases double-underlining indicates new rules. 17.07 (3)(a) is already underlined because it is a local implementation section. Certainly 17.06(1)(g) and (h), and possibly parts of 17.07(7), are modifications rather than local implementations of the existing Chapter 17. As such, they will be forwarded for action by the Regents, and will take effect when such action is complete. The remaining additions would become effective immediately.

Supporting Statement: Our focus has been to make it clear that racially, etc., inspired misconduct will not be tolerated, and to establish penalty enhancement in such instances. The penalty enhancement falls under the disciplinary procedure section, 17.07, and the duties and powers of the tribunal section, 17.09(4)(c).

We have spelled out three kinds of misconduct which were not previously included in the definition of offenses section, 17.06(1). The first is physical attack, as example 4 under 17.06(1)(b). The second is damage to private property, as a new offense labeled 17.06(1)(g). This damage to private property protection is extended to the students' housing units off campus if they are multiple-unit facilities devoted primarily to student housing.

The third new instance of misconduct is labeled 17.06(1)(h). This protects a university employee, student, or guest from intentional interference with his or her academic work or study by persistent explicit comments, epithets, or other expressive behavior. The comments, etc., must be directed to the individual, explicitly demean that individual's race, etc., and create an intimidating, hostile, or demeaning environment for academic work or study.

April 11, 1988

This third instance of misconduct has been written with extreme care to preserve First Amendment rights. We have consulted with Law School faculty and with two Law School students assigned this as a research project, and with the University legal staff, to avoid language or implications of improper infringement of Constitutional rights. Both Professor Gordon Baldwin and Professor Ted Finman agree with the committee that 17.06(1)(h) is in an acceptable form for presentation to the Senate.

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# UW MADISON PRINCIPLES OF NONDISCRIMINATION, 1988

## HERITAGE

*The University of Wisconsin will be permanently great in the degree in which it understands the conditions of the prosperity and peace of the people, and helps to provide them...*

John Bascom, UW President 1874 - 1887, 1887 Baccalaureate Address

*...We cannot for a moment believe that knowledge has reached its final goal, or that the present condition of society is perfect. We must therefore welcome from our teachers such discussions as shall suggest the means and prepare the way by which knowledge may be extended, present evils...removed and others prevented.*

*Whatever may be the limitations which trammel inquiry elsewhere we believe the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.*

UW Board of Regents, 1894 Report

*The greatest waste of this nation is its waste of talent. If we could only fully utilize our talent, there would be no limit to our progress...the opportunities to obtain an education broad and complete, fitted to the demands of the present time, must be provided.*

Charles Van Hise, UW President 1903 - 1918, 1913 Address

## STATEMENT

The University of Wisconsin at Madison, mindful of its foundation in free inquiry and expression, education of a diverse and changing student body, and service to the public, affirms its commitment to a community in which all students, staff, and faculty

- are accepted and judged as individuals, independent of ancestry, social background, physical characteristics, or personal beliefs;
- may freely engage in academic expression and debate in our classrooms and public halls, and pursue their social and private lives in our community, unthreatened by discrimination, disruption, or harassment of any form;
- take joy in the diversity of society and in working to understand and eliminate the barriers to full participation in society by every person.

We accept the responsibility of representing these values to the city, state, and world, and applying them to each other and to our guests.

These conditions are necessary for the future effectiveness of this University and shall guide its policies.

UWS 17.06 Offenses defined. (1) The university may discipline a student in nonacademic matters in the following situations. For the purposes of this section, the term "intentional conduct" shall include conduct which the student knew or reasonably should have known would result in occurrences prohibited by this section.

(a) For intentional conduct that seriously damages or destroys university property or attempts to seriously damage or destroy university property.

(b) For intentional conduct which constitutes a serious danger to the personal safety of other members of the university community. In order to illustrate the types of conduct which this paragraph is designed to cover, the following examples are set forth. These examples are not meant to illustrate the only situations or types of conduct intended to be covered.

1. A student would be in violation if he/she attacked or threw rocks or other dangerous objects at law enforcement personnel whose services had been retained or called for to protect members of the university community or university property, or if he/she incited others to do so when he/she knew or reasonably should have known that such conduct would result.

2. A student would be in violation if he/she sold or delivered a controlled substance as defined by the Wisconsin Uniform Controlled Substance Act (ch. 161, Stats.) or if he/she possessed a controlled substance with intent to sell or deliver. For the purposes of this section "delivery" shall be defined as a delivery prohibited by ch. 161, Stats.

3. A student would be in violation if he/she removed, tampered with, or otherwise rendered useless university equipment or property intended for use in preserving or protecting the safety of members of the university community such as fire exit signs, extinguishers, alarms, or hoses, first aid equipment, or emergency telephones, or if he/she obstructed or caused to be inoperable fire escape routes such as stairwells or elevators.

4. A student would be in violation if he/she attacked or otherwise physically abused, restrained, or threatened to physically injure a University employe, student or guest. } new

(c) For intentional conduct that obstructs or seriously impairs or attempts to obstruct or seriously impair university-run or university-authorized activities on any campus, including activities either outdoors or inside a classroom, office, lecture hall, library, laboratory, theater, union, residence hall, or other place where a university-run or university-authorized activity is carried on. The kind of intentional conduct referred to is conduct which by itself or in conjunction with the conduct of others prevents the effective carrying on of the activity--a result which the student knew or reasonably should have known would occur. In order to illustrate types of conduct which this paragraph is designed to cover, the following examples are set out. These examples are not meant to illustrate the only situations or types of conduct intended to be covered.

1. A student would be in violation if he/she participated in conduct which he/she knew or should have known would prevent or block physical entry to, or exit from, a university building, corridor, or room to anyone apparently entitled to enter or leave in connection with a university-run or university-authorized activity.

2. A student would be in violation if, in attending a speech or program on campus sponsored by or with permission of the university, he/she engaged in shouted interruptions, whistling, derisive laughter, or other means which by itself or in conjunction with the conduct of others prevented or seriously interfered with a fair hearing of the speech or program, under circumstances where the student knew or reasonably should have known this would occur.

3. A student would be in violation if in a classroom he/she used techniques similar to those specified in the preceding paragraph, or filibuster-type tactics or other tactics, which by themselves or in conjunction with the conduct of others, prevented or seriously interfered with the carrying on of the teaching and learning process, under circumstances where the student knew or reasonably should have known this would occur.

4. A student would be in violation if he/she intentionally obstructed a university official or employe engaged in the lawful performance of his/her duties.

5. A student would be in violation if he or she removed pages from library books or parts of other materials or caused books or materials to be unavailable for use by others by removing them from their proper place without proper authorization or by hiding them in the library so that they are not available in the usual manner to persons wishing to use them.

(d) For unauthorized possession of university property or property of another member of the university community.

(e) For acts which violate the provisions concerning parking, traffic, I.D. cards, university keys, drugs, smoking in unauthorized places, carrying firearms, unauthorized peddling, unauthorized use of sound-amplifying equipment, and other subjects covered by the published University of Wisconsin System Administrative Code (ch. UWS 18).

(f) For making a knowingly false statement, either orally or in writing, to any university employe or agent on a university-related matter.

(g) For intentional conduct that destroys or seriously damages private property of students, school officials, employes, or invited guests when such property is located on campus or in off-campus multiple-unit facilities which are at least three-quarters occupied by students, such as fraternity and sorority houses, private dormitories and student cooperatives. } new

(h) For intentional interference with the academic work or study of a University employe, student or quest by persistently directing to that individual explicit comments, epithets or other expressive behavior that: } new

1. explicitly demeans that individual's race, sex, religion, color, creed, disability, sexual orientation, national origin or ancestry, and } new

2. creates an intimidating, hostile or demeaning environment for academic work or study. } new

....

UWS 17.07 Disciplinary procedure. (1) INVESTIGATING OFFICER. The chancellor of each institution, after consultation with the elected committee which serves as the faculty's executive arm and with the elected officers of the principal student organization, shall designate a person as "investigating officer" who shall investigate cases of student conduct alleged to be in violation of s. UWS 17.06(1) and (2). Where it appears that a violation has occurred, the investigating officer shall proceed in accordance with the provisions of this chapter.

(2) FORMAL ADJUDICATION. If the maximum sanction, including possible penalty enhancement, sought by the investigating officer includes suspension or expulsion, the procedures in s. UWS 17.09 shall apply and the investigating officer shall cause a statement of charges to be prepared and served upon the student involved. The statement of charges shall contain:

} new

(a) A concise summary--giving dates, time, place, and events--of the facts or conduct on which the charge is based.

(b) A citation to and quotation from the rule(s) alleged to have been violated.

(c) A statement of the maximum penalty sought by the investigating officer, including the possibility that the penalty may be enhanced as in 17.07(7).

} new

(d) An explanation of the consequences of failure to answer the statement of charges.

(e) Statements as to whether the university will or will not be represented by counsel and that the student may be represented by a person of his/her choice, including legal counsel, at his/her own expense.

(f) A copy of this chapter.

(3) INFORMAL ADJUDICATION. (a) If the maximum penalty sought does not include suspension or expulsion, the investigating officer may proceed with informal adjudication except that if



adjudication in this manner would result in disqualifying the student for financial aids, the procedures in sec. 17.09 shall apply. The investigating officer shall provide the student with a concise written summary of the facts or conduct on which the charge is based, a citation to and quotation from the rule(s) alleged to have been violated, a statement of the maximum penalty which may result, including the possibility that the penalty may be enhanced as in 17.07(7), and notice of and an opportunity for a hearing at which the student may be represented by a person of his/her choice. At the informal hearing, the evidence against the student shall be reviewed and the student shall have an opportunity to present evidence and argument, including a written statement, to refute the charge. After the hearing, the investigating officer shall provide the student a written decision which shall include findings of fact and conclusions and notification of the student's right to appeal the decision to the Informal Adjudication Review Committee.

} new

1. The student may initiate an appeal of this decision by notifying the investigating officer in writing within five (5) days from service of the investigating officer's written decision.

2. The Informal Adjudication Review Committee shall be three (3) students (from different years and classifications) who are appointed annually by the President of the Wisconsin Student Association with the consent of the Senate, three (3) faculty members (from different divisions) who are appointed annually by the Chancellor after consultation with the divisional committees, and the investigating officer who shall serve as an ex-officio, non-voting member. The Chancellor shall designate one of the committee members as chairperson. A quorum shall be three (3) voting members.

3. The committee shall meet to establish review procedures. These procedures shall include an opportunity for the student or his/her representative to be heard or to submit a written statement, and a written notification to the student from the committee of its conclusions.

4. The function of the committee shall be to review the evidence upon which the investigating officer based his or her

findings of fact and to review the disciplinary action taken. The committee shall determine whether or not the evidence provides a reasonable basis for the resulting findings of fact and disciplinary sanction. If the committee concludes that the evidence does not provide a reasonable basis for the decision, it shall either dismiss the charge against the student or direct the investigating officer to reduce the University disciplinary sanction as appropriate.

(b) If, during informal adjudication, the investigating officer concludes that suspension or expulsion should be sought rather than a lesser sanction, the investigating officer may cause a statement of charges to be served upon the student in accordance with sec. 17.07(2), in which event the procedures in sec. 17.09 of this chapter shall apply.

(4) SETTLEMENT [unchanged].

(5) RIGHTS AND PRIVILEGES [unchanged].

(6) SERVICE OF NOTICE OR DECISIONS [unchanged].

(7) PENALTY ENHANCEMENT. Whenever it is established by the hearing tribunal or investigating officer that a student has committed an offense against a person because of that person's race, sex, religion, color, creed, disability, sexual orientation, national origin or ancestry:

} new

(a) the minimum sanction that shall be imposed for such offense is probation;

} new

(b) if the offense is such that probation, suspension or expulsion would normally be imposed, the hearing tribunal in the case of formal adjudication, or the investigating officer shall, for an offense defined in 17.06(1)(a)-(g), and may, for an offense defined in 17.06(1)(h) impose either the next more severe sanction or some additional sanction appropriate to the offense, such as loss of privileges, community service, a public apology or counseling.

} new

UWS 17.09 Discipline involving suspension or expulsion.

(1) A student charged in accordance with s. UWS 17.07(2) has 10

calendar days from the day of service to request a hearing in accordance with this section. The request for a hearing shall be in writing directed to the chancellor and shall also include an answer to the statement of charges which shall specifically admit, deny, or explain each of the facts alleged in the statement of charges unless the student is without knowledge in which case he/she shall so state, such statement being a denial. If an answer is filed which does not specifically admit, deny, or explain every allegation in the statement of charges, those allegations which are not admitted, denied, or explained shall be deemed denied. An answer which denies some or all of the allegations but which does not request a hearing shall be construed as a request for a hearing.

(2) If the student does not file an answer to the statement of charges in accordance with sub. (1), the allegations in the statement of charges shall be accepted as true and the university may proceed to expel, suspend, or impose other punishment on the student unless good cause to the contrary is shown. The sanction imposed may not exceed that specified in the statement of charges. Notice of such action shall be served on the student and become effective upon service in accordance with s. UWS 17.07(6).

When a request for a hearing is made, the case shall be referred by the chancellor to the student conduct hearing tribunal established in accordance with s. UWS 17.08. Notice of referral to a hearing tribunal shall be sent to the student. The student shall also be notified of the name and address of the person who will present the university's case to the tribunal.

(4)(a) Hearing procedures. In this section, "presiding officer" shall mean the hearing examiner appointed in s. UWS 17.08(1)(a), or the presiding officer of the student conduct hearing committee, established in s. UWS 17.08(1)(b). "Tribunal" shall mean the hearing examiner appointed in s. UWS 17.08(1)(a) or the student conduct hearing committee established in s. UWS 17.08(1)(b).

(b) Duties of the presiding officer. 1. Take custody of the case file and papers.

2. Schedule hearings in accordance with these rules.

3. Issue subpoenas and administer oaths.

4. Rule upon offers of proof and receive relevant evidence.

5. Regulate the course of the hearing, dispose of motions, procedural matters or requests, and, if appropriate or necessary, order the removal of persons who reasonably obstruct or impair the tribunal's proceedings in its presence, and/or if such persons are students, order the investigating officer to commence disciplinary proceedings.

6. Schedule filing of briefs and proposed findings by the student and the university.

7. Produce a summary of the evidence.

8. Take any other actions necessary to conduct the hearing.

(c) Duties and Powers of the tribunal. Individual members of the tribunal:

1. May challenge any ruling by the presiding officer and may, by majority vote, overrule such ruling but such matters unless otherwise convenient should be decided in closed session.

2. Shall, by majority vote, render written findings of fact, decision, and disciplinary sanction which does not exceed that specified by the statement of charge. The tribunal shall establish whether penalty enhancement as defined in 17.07(7) shall pertain.

} new