



UNIVERSITY OF WISCONSIN SYSTEM

DEPARTMENT CHAIR TRAINING

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OPEN MEETINGS

Wisconsin's open meetings law

- Wis. Stats. ss. 19.81-19.98
- Requires governmental bodies to conduct official business in open session and post advance public notices for meetings
- Governmental bodies include committees and departments created by law

UW governmental bodies

- The Board of Regents and its committees are governmental bodies, as are:
 - Campus bodies created by the BOR, including shared governance bodies and academic departments
 - Subunits created by formal action of these bodies, including tenure review committees

Meetings

- A meeting occurs when:
 - A sufficient number of members of a body are present
 - With the purpose to engage in public business
- Considerations
 - How gathered—intentional, chance, social
 - Attendance—quorums
(positive, negative)

Walking quorums

- We cannot avoid our public duty to conduct business in public through serial communications, or a “walking quorum”
- Be mindful about polling half or more of a body’s members in advance of a public discussion

Format considerations

- The law does not distinguish among in-person, Zoom, or conference call-based meetings
- Even emails within a body's membership can become problematic if dissemination of information (okay) leads to discussion (a meeting)... mind the reply-all button

Providing meeting notice

- UW departments and subunits have a relaxed standard for providing the required advance notice
- They “shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice”

Notice contents

- A notice must content the time, date, place, and subject matter of the meeting
- Notice of the subject matter must identify general topics, but be more specific than “new business”
- The body should limits its discussion to items on the notice

Notice timing, posting

- Notice must be given at least 24 hours in advance of a meeting, Sundays and holidays excluded*
- Separate notice is required for each meeting*
- Notices can be placed in a department office, on a department website, or in other campus areas notices are posted

Public participation

- Members of the public have
 - The right to attend and observe meetings (but not to speak, unless the body provides an opportunity for public comment)
 - The right to record the meeting in a manner that is not disruptive

Meeting minutes

- The open meetings law requires only a record of the body's motions and votes
- Departmental bylaws likely require minutes
- Minutes should include an attendance roster

Voting

- Secret ballots are only permitted when electing officers of the body
- Voice votes are generally permissible
- A roll-call vote is required:
 - To enter closed session
 - When voting on personnel matters in closed session

Voting math

- Most votes require simple majorities – more than 50%; tie votes fail
- Circumstances that count as “no” votes
 - Abstentions
 - Non-voting chairs

Closed session

- Meetings must convene in open session, followed by a motion/vote to enter closed session for a permitted purpose
- Practically speaking, personnel actions (“employment, promotion, compensation, or performance evaluation”) are the only permissible reason to enter closed session

Tenure reviews

- Tenure reviews have distinct legal requirements
- The faculty member under review must be given “actual notice of any evidentiary hearing” and of final action
- The notice must state that the person “has the right to demand that the evidentiary hearing or meeting be held in open session”



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**PUBLIC RECORDS,
CONFIDENTIALITY AND PRIVACY**

Wisconsin public records law

- All records created or kept by UW employees, including email and text messages, are public records unless exempted by law
- Public records must:
 - Be retained in accordance with established retention policies
 - Be produced upon request unless a statutory exception exists

The content, not the medium

- The determination of whether a record is a public record is based on its content, not where it is stored
- An email about a work-related topic sent via a private email account is still a public record

Personnel files

- Although there is no blanket exemption for personnel files, there are exceptions for information within personnel files, including:
 - Personal contact information
 - Current (ongoing) misconduct investigations
 - Performance evaluations
- Employees have a legal right to be notified of and challenge in court the potential release of any investigatory or disciplinary records

Confidentiality and privacy

- Even in a public records environment, we have legal duties to safeguard certain records and information, including:
 - Records exempted from the public records law
 - Employee medical and disability information
 - Student records

Employee medical and disability information

- We have a duty of confidentiality under the ADA and FMLA with respect to employee medical information and disability information
- This information is maintained by HR, separate from personnel files
- Details about employees' health should not be shared broadly

FMLA and ADA

- FMLA/WFMLA is job protected leave for an employee to care for themselves or a family member
- Can be continuous, intermittent or on a reduced schedule basis
- Employee can choose to take W/FMLA leave as paid or unpaid
- Benefits and continuous service will be uninterrupted
- <https://www.wisconsin.edu/ohrwd/benefits/leave/fmla/>
- Contact Stephanie Hartmann
at hartmans@uww.edu

FMLA and ADA

- **A workplace accommodation is an adjustment to a job or work environment that makes it possible for an individual with a disability to perform their job duties.** Accommodations may include specialized equipment, modifications to the work environment or adjustments to work schedules or responsibilities.
- [uww.edu/faculty and staff/human resources/forms/disability accommodation request form](http://uww.edu/faculty_and_staff/human_resources/forms/disability_accommodation_request_form)
- Contact Connie Putland at putlandc@uww.edu

FERPA

- FERPA protects records maintained and directly relating to students (“education records”)
- Education records should generally only be shared on a need-to-know basis or with a student’s consent
- But common-sense exceptions also apply—they can be disclosed pursuant to subpoena or in an emergency

Know your records managers

- Each UW institution must appoint:
 - A records and forms officer responsible for record retention and authorizing deletions
 - A public records custodian responsible for responding to public records requests
 - Don't go it alone—it's the custodian's job!
 - Meghan Williams, Office of Administrative Affairs
pra@uww.edu

...but you are responsible, too

- You are responsible for keeping your own records and destroying them only in accordance with approved schedules
- Supervisors are also responsible for ensuring that their employees comply with the public records laws



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DIFFICULT PERSONNEL ISSUES

Seven guideposts to avoid legal issues

- Concerning yourself with the activities of your department;
- Conforming to university policies and practices;
- Consistently applying of policies;
- Consulting where appropriate;
- Committing important events to paper;
- Courts' deference to the educational judgment of administrators;
- Coverage for actions taken within the scope of employment.

Employee discipline

- Department chairs, while colleagues, are also supervisors, and should be prepared to document issues and initiate a disciplinary process
- Employees may be disciplined for:
 - Violation of policy or work rules
 - Poor performance
 - Misconduct

Due process

- A public employer such as UW must provide due process prior to enforcing any disciplinary sanction involving the loss of pay
- Due process requires notice of the wrongdoing and opportunity for the employee to provide a meaningful response

The disciplinary process

- 1. Complaint
- 2. Investigation
- 3. Decision – discipline up to termination
- 4. Optional review
- 5. Final institutional decision
- 6. Optional Board of Regents review

Disciplinary missteps

- Insufficient evidence supporting action
- Inadequate investigation
- Bowing to threats of lawsuits
- Excusing or tolerating inappropriate behavior
- Breaches of confidentiality (especially e-mail)
- Failure to apply procedures consistently
- Adopting an “us” v. “them” mentality.

Disciplinary investigations

- Employee misconduct or poor performance that could result in a disciplinary sanction requires a disciplinary investigation
- No decisions on discipline should be made until:
 - An investigation is complete
 - The employee has had:
 - Notice
 - The opportunity to respond

Top five mistakes in disciplinary decisions

1. Failing to follow the process (and failing to make changes for the next time)
2. Failing to heed Sgt. Friday's admonition of "just the facts" (relying on opinion and generalized information)
3. Making a disciplinary finding that does not fully explain the rationale behind the decision
4. Failing to follow through on requirement for improvement
5. Failing to seek help from HR/legal

Five more mistakes from tenure decisions

1. Failing to tie the facts directly to department standards
2. Misapplying collegiality concerns (popularity v. professionalism)
3. Relying too much, or too little, on student evaluations
4. Failing to comply with the Open Meetings Law (lack of proper notice, use of a secret ballot)
5. Failing to establish how the vote will be interpreted (e.g. counting an abstention) before the vote

Who to contact

- Connie Putland- 262-472-1409 or putlandc@uww.edu
- Watch for additional trainings throughout the year

Questions??