

2012 ROSE BOWL INCIDENT REVIEW

Submitted by: Patrick Fiedler, Attorney, Axley
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Police Emeritus; Yolanda Garza, Assistant Dean
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January 23, 2012

On January 9, 2012, we were appointed by University of Wisconsin-Madison Chancellor David Ward to review allegations of inappropriate conduct within the Division of Intercollegiate Athletics (hereafter "Athletics Department") that had recently come to his attention. We were directed to include in our review: 1) allegations of inappropriate conduct by former Associate Athletic Director John Chadima during the most recent Rose Bowl trip, including but not limited to sexual improprieties and abuse of authority; 2) abuse of authority or other inappropriate conduct by Mr. Chadima in his role as Associate Athletic Director; and 3) a review of the administrative reporting process for misconduct allegations. We were further directed to report other matters that may come to our attention about which the Chancellor should be aware.

Although we had no authority to compel cooperation, we did receive cooperation from all of the university employees whom we interviewed. We reviewed all documents we believed were relevant including any pertinent items contained in Chadima's office computer and university-issued cell phone as examined by Division of Information Technology staff.

We interviewed or spoke with 23 people including professional staff and student employees. (Appendix A) Three of the student employees of the Athletics Department did not wish to speak with us and we honored their wishes. We were not able to arrange an interview with Bret Bielema, Head Football Coach. We have listed in the appendix the names of the non-students (all university employees) with whom we spoke. We talked at least briefly and most often at length with nine student employees of the Athletic Department, all of whom were at the Rose Bowl assisting with the football team activities and with other department events during the Rose Bowl week. We identify as John Doe the student employee who reported the alleged incident of sexual assault by John Chadima. Other students we identify as student employees.

Through his attorney, Mr. Charles Giesen, we invited Chadima to speak with us. He declined. On January 19, 2012, Chadima through his attorney issued a press release that we include in the appendix.

[Appendix B]

In reporting the results of our investigation into the alleged incident of sexual assault, we want to make clear that we are describing

allegations as opposed to making findings of fact. We were not constituted as a hearing body. We will report the details of what we have learned from our interviews, the circumstances of the incident and the estimates of credibility given by those who heard the immediate reports of the incident from John Doe. We will describe the response to the reported incident by Athletic Department staff and the nature of the advance training they had received to guide their response to such incidents. Finally, we will discuss several areas of concern arising out of this incident that might warrant changes in university and/or Athletic Department policies and practices.

I. The Incident

For at least the last four years, at each football bowl game, Chadima in his role as Associate Athletic Director had sponsored a party for the staff and student employees who worked "behind the scenes" in support of the football team. Various referred to as the "unsung heroes" or the "B team," these were Athletic Department employees who were brought to the Bowl site to pack and unpack equipment, carry luggage, provide secretarial services, handle audio-visual duties, and perform numerous other duties necessary for the operation of the

university's Bowl participation. Working long hours over several days, these employees would not normally be included in any of the other Bowl receptions or formal events. Chadima's party, held in his suite on an evening prior to the Bowl game, was seen as a way to thank them for their hard work.

Chadima's party at this year's Rose Bowl was held the evening of December 30 lasting into the early morning of December 31, 2011. The party was held in Chadima's suite at the J.W. Marriott hotel in Los Angeles, the primary hotel hosting the university contingent. The party began about 7:30pm. Chadima provided alcohol, beer and mixers from which guests were invited to serve themselves. Each of the student employees with whom we talked attended the Chadima party and most consumed alcohol there. Several Athletic Department academic and classified staff also attended the party even if only briefly. Some of the student employees who attended were under 21 years of age. Barry Alvarez, Athletic Director, Sean Frazier, Deputy Athletic Director, and [REDACTED] for the Athletic Department, were aware of the party but did not attend this year's event.

Our interviewees reported arriving and leaving at different times during the party but they generally agreed that 25-30 people seemed to be in the room at any one time. No one saw anything they believed was unusual or improper in any way at the party. Chadima and others seemed to have consumed significant amounts of alcohol during the evening but no one, including Chadima, was seen to be acting inappropriately. Between 1:30am and 2:00am there were 6-7 student employees remaining at the party with Chadima. At some point during this period all but one student left the party with some going to their rooms or to visit friends in the hotel and others leaving to walk to a nearby restaurant.

The description above of that night's events is widely agreed to by those we interviewed. What follows is the report of the single student employee who did not leave the party with the others.

John Doe was the one student left in Chadima's suite after the other student employees left early in the morning of December 31. He reports that as he was leaving the Chadima suite behind the other exiting students, Chadima called him back to "Stay here and have a drink with me." This had never happened to Doe before with Chadima, but

Doe had no reason to be suspicious. He had known Chadima for several years as a "nice guy" who was always friendly and was highly respected. He did not work directly with Chadima but says Chadima was often around the football team's activities. Chadima asked John Doe to make a drink for each of them. Doe did so and remembers making about three rum drinks each for Chadima and himself. Doe reports that both he and Chadima probably were intoxicated but were coherent and in control of their physical movements.

At one point, as they were seated at the corner of a large table in the suite, Chadima told John Doe that he thought that Doe might be gay, and that some of the other student employees thought Doe was gay. Doe told us he felt very uncomfortable and defensive but was not sure what was going on. He said that Chadima reached over and removed Doe's pants belt and then inserted his hand inside Doe's pants on his genitals. Doe reported that he was shocked and frightened and slapped Chadima's hand away and swore at him. He reported that Chadima said, "I thought you liked it" and "What are you going to do about it?" and "I could have you fired." Doe quickly left the room. As he was leaving the room, Doe reported that Chadima seemed to want to gloss over the incident as "just joking around."

II The Immediate Response to the Alleged Misconduct

About 3:15am John Doe knocked on the hotel door of [REDACTED] and Doe's immediate supervisor. Doe seemed very upset. Doe said that he had come to [REDACTED] first. He related the incident to [REDACTED]. He said, "I don't want anything." "This just isn't right." Doe stated that he didn't want to do anything to disrupt the team's Bowl preparations. John Doe reports that [REDACTED] said, "I'm glad you told me" and that they would talk about it later in the morning. [REDACTED] told us that when Doe spoke with him that morning, Doe clearly had been drinking but seemed coherent. John Doe told us that he felt reassured by [REDACTED] response and told [REDACTED] that he was going to talk with more people.

John Doe then went to three fellow student employees to tell them. Their reports of Doe's comments to them are consistent with the other reports of the incident description as related by Doe. They describe Doe as probably intoxicated but that he seemed clear and coherent although very upset. Two of the student employees went with Doe to see [REDACTED] in his hotel room between 4am and 5am. John Doe repeated the story to [REDACTED]

Doe remembers that [REDACTED] assured him that "We're going to get this taken care of." [REDACTED] reports that Doe emphasized that he "did not want anything from this, no money, no distraction, but just that this was wrong."

[REDACTED] and [REDACTED] met early the morning of December 31 to discuss what they had heard. They were not sure about the procedure but agreed that John Doe seemed credible and that they needed to report the incident further. [REDACTED] met again with John Doe briefly that morning. He determined that Doe's story remained consistent and that he was clear that he did not want anything done immediately. [REDACTED] checked with John Doe several times in the next few days to assure that Doe was feeling safe and that he still did not want any action taken until they returned to Madison. Doe told us that both [REDACTED] and [REDACTED] repeatedly assured him that he did the right thing in reporting the incident.

All of the staff and student employees who heard John Doe's report of the incident that night judged his report to be consistent and credible. In our interview with John Doe, he presented a clear and

coherent report that was consistent with the statements related to us by our other interviewees.

John Doe made clear to us during our interview with him that he indeed had not wanted anything done at the Rose Bowl about this incident that might distract from the team's participation in the Rose Bowl, that he was pleased and satisfied with the support he had received from [REDACTED] and his fellow student employees, and that he was confident that his report would be appropriately dealt with when they returned to Madison.

III. Response to the Incident in Madison

John Doe, [REDACTED] and [REDACTED] returned to Madison on the team charter flight the evening of January 3, 2012. Doe and the other student employees went to their homes. [REDACTED] and [REDACTED] agreed to meet the next morning to discuss how they would proceed. They met the morning of January 4 and decided to call UW Madison Police Lieutenant Jason Whitney who had travelled with the team to the Rose Bowl. When they met with Lieutenant Whitney that afternoon, he gave them a copy of the December 13, 2011 memo to UW Madison deans and directors from UW Madison Police Department Chief Susan Riseling ("Crime

Prevention Objectives and Reporting Obligations"). [Appendix C] Whitney had highlighted the section noting that any employee witnessing or receiving a report about a sexual assault is required by Wisconsin Statute Section 36.11(22)(c) to report the incident to the Dean of Students Office. Whitney emphasized the importance of acting promptly.

[REDACTED] and [REDACTED] planned to contact the Dean of Students but were uneasy about reporting without first alerting the appropriate officials in the Athletic Department. At that point no one else in the Athletic Department's administration knew about the incident.

The next morning, January 5, [REDACTED] and [REDACTED] attempted to meet with Professor Walter Dickey, Senior Associate Athletic Director. After waiting for some time, they learned that Dickey was out of town and not expected to be in his office that day. They then arranged an appointment that afternoon with Holly Weber, Human Relations Director for the Athletic Department. Shortly before that appointment, [REDACTED] described the incident to his immediate supervisor, [REDACTED] [REDACTED] for the Athletic Department. [REDACTED] [REDACTED] and [REDACTED] then met with Holly Weber. They described the

details of John Doe's allegation and what had happened since the initial report. Weber said that she would talk immediately with John Dowling, Senior University Legal Counsel, and asked [REDACTED] and [REDACTED] to wait until she got back to them before contacting the Dean of Students. Weber called Dowling and arranged a meeting for the next morning, Friday, January 6. Also on the afternoon of January 5, Weber met with Randy Marnocha, Associate Athletic Director for Business Services, and Sean Frazier, Deputy Athletic Director, to describe the incident to them.

Marnocha and Frazier both told us that they were shocked by the reported misconduct but were satisfied that [REDACTED] and [REDACTED] had acted appropriately to support John Doe and to begin the reporting process. Weber indicated that her intent was to insure that Dowling was consulted about the legal issues involved and to continue the collection of information that would be necessary for Athletic Department administrators to consider whether or not Chadima should face university employee misconduct disciplinary action. Accordingly, she met again individually with [REDACTED] and [REDACTED] on Friday, January 6 before her scheduled meeting with Dowling. She wanted to insure that she had their complete reports.

Weber, Marnocha and Frazier, met with Dowling in his office on the morning of January 6. At some point during that meeting, they were told that the Athletic Department should stop its investigation of the allegation and that the Chancellor's office was considering how to proceed. Soon afterward that day, the Chancellor and Alvarez decided to place Chadima on administrative leave, and the Chancellor decided to appoint this committee to conduct the further investigation.

Also on this Friday (January 6), John Doe and his fellow student employees had returned to Madison to [REDACTED]

[REDACTED] Weber and Marnocha met individually with John Doe to interview him about the incident and to insure that he was receiving the support and assistance he might need. They also interviewed two other student employees who had received the initial reports from Doe. They had intended to interview all the student employees who had some knowledge of the incident before they were informed by Frazier that the Chancellor's office would take charge of the further investigation. Weber stopped her investigation at that point. Weber reported to us that the details of the allegation were very consistent from one interviewee to another.

Later on January 6, [REDACTED] and [REDACTED] met with Frazier and Weber. Frazier instructed them to meet as soon as possible with the Dean of Students. [REDACTED] and [REDACTED] met that afternoon with Dean of Students Lori Berquam and Associate Dean Kevin Helmkamp. Berquam described the annual report on sexual assaults that state law and federal law require the university to prepare and assured them that the report would include no names of victims or those making the reports. Berquam asked that they give John Doe her direct contact numbers and urge Doe to call her if he needed any assistance.

IV. Abuse of Authority or Other Inappropriate Conduct by Chadima

Our interview with John Doe is the only interview in which we heard any evidence of abuse of authority by John Chadima. In none of our interviews did we hear any report of abuse of authority by Chadima prior to the sexual assault allegation. Not all of the student employees had had significant contact with Chadima; but those who knew him from several years' experience liked him. They described him as friendly, concerned about their welfare, and highly respected. None of them reported any incident that they regarded as displaying an abuse of his authority. They were shocked and surprised by the allegation.

[REDACTED] and [REDACTED] also were emphatic that they had never seen anything in Chadima's behavior to prepare them for this allegation. They regarded him as a friend, as a mentor, and as a very well respected colleague. This was a very difficult and stressful situation for them, to have to hear and need to report such an allegation about Chadima. In our view, the fact that they responded as they did under these circumstances and without hesitation in supporting John Doe and carrying out their reporting obligations demonstrates their professional integrity.

Upon our request, Division of Information Technology staff examined the records contained in Chadima's office computer and university issued cell phone. We found no information in the office computer that was relevant to our inquiry. However, we were concerned by a series of text messages on Chadima's phone sent to a student employee on December 30, 2011, the night before the "B team" party. The messages demanded that the student come to Chadima's J.W.Marriott Hotel suite and threatened to fire him if he did not comply. The student employee who received these messages was not willing to talk with us and we cannot determine what he might have understood from the messages. Whether or not the threat by Chadima to fire the

student was intended as serious or as a joke, we were alarmed by the willingness of a senior university official to use such language with a student employee. We also note that this threat to fire the student is similar to the alleged comments made by Chadima to John Doe the next night.

We also believe that the circumstances of the "B team" parties themselves represent another example of inappropriate conduct by Chadima. While we certainly understand the wish to find ways to recognize the hard work of those who are "behind the scenes" of the Bowl productions, we question the wisdom of this use of alcohol in these circumstances. The alcohol in Chadima's suite was provided by the Athletic Department from a purchase made with donor funds. Chadima in turn offered alcohol freely to anyone who came to the party, and it appears that more than half of those attending the party were students. Students, including under-age students, were invited to serve themselves alcohol and several of the student employees told us they were intoxicated when they left Chadima's suite after the party.

While Alvarez and other senior Athletic Department administrators knew about Chadima's "B team" parties, they did not

normally attend them; and it is not clear to us if they knew about the extensive service and availability of alcohol at the parties. Alvarez told us that while there were no specific Athletic Department guidelines about use of alcohol, he "did not recommend" that professional staff drink with students or student employees. We believe there is reason to question the appropriateness of the sort of unregulated service of alcohol to students as well as the practice of a professional staff member drinking with students at university events.

V. Recommendation about Alcohol Service to Students

With the alcohol purchased by the Athletic Department and served in a university official's hotel suite, we believe that Chadima's parties, in effect, were university events. University staff with whom we talked were unaware of any university regulations that would provide guidelines for such events at off campus facilities. We recommend that the university review these issues and consider whether or not rules or guidelines should be developed.

VI. Administrative Reporting Process

As we interviewed both staff and student employees, we asked in some detail about their knowledge of the university process for

reporting allegations of sexual assault. Our student interviewees agreed that John Doe had done the right thing by reporting the incident and also agreed that they would feel comfortable reporting an incident to [REDACTED] or [REDACTED] [REDACTED] and [REDACTED] seemed very clear from the beginning that they would need to report the allegation but were less certain exactly how to begin. Soon after returning to Madison from the Bowl game, they contacted UW Police Lieutenant Whitney, attempted to meet with Professor Dickey, and did meet with Holly Weber the athletic department human relations director.

During the fall of 2011, various university offices had attempted to alert faculty and staff about the importance of responding directly and quickly to reports of sexual assault. We include as attachments the following:

- October 26, 2011 memorandum to all university employees from Provost Paul Deluca (Appendix D)
- December 12, 2011 email from Dean of Students Lori Berquam to members of the university community (Appendix E)

- December 13, 2011 memorandum to deans and directors from UW Police Department Chief Susan Riseling (Appendix C).
- December 6 and 20, 2011 PowerPoint presentation by the Office of Legal Services to Athletic Department coaches and administrative staff (Appendix F)

While it is not clear that [REDACTED] and [REDACTED] recalled the memoranda and email sent earlier in the semester, [REDACTED] had attended a December 2011 presentation by the Office of Legal Services. [REDACTED] supervisor, [REDACTED] had also attended a presentation and described the content of the session to [REDACTED] [REDACTED] and [REDACTED] knew that they needed to report John Doe's allegation even if they were not exactly sure where to begin.

There always will be opportunities for improvement in the training of university staff in responding to and reporting misconduct allegations. But we cannot imagine a better process outcome than the response that happened in this case at the direction of [REDACTED] [REDACTED] and the other Athletic Department and other university staff. [REDACTED] and [REDACTED] received the allegation, assured John Doe's safety,

provided support for him, honored his wishes not to act until returning to Madison, sought advice about how to proceed, and passed on the information to the appropriate officials. Within the Athletic Department, the senior administrative officials from Alvarez on down have repeatedly assured [REDACTED] and [REDACTED] that they have acted appropriately in reporting this allegation. We view this response process as nearly a model of how we might hope all such cases would be handled.

VII. Recommendations about the Reporting Process

Various university offices produced and delivered a large amount of information about assault reporting procedures during the fall 2011 semester. We were impressed by the volume of material but found ourselves sometimes confused about exactly what needed to be done to comply with the various federal and state laws. Providing clear notice to university employees about their obligations under law is certainly necessary; but we would suggest trying to simplify the instructions to make it clear what must be reported and when. As Dean Berquam told us the most important message is "If you see something, say something." It may be that urging employees to talk with their human relations or

personnel director to get clarification about how to proceed would be more useful than expecting them to remember the details of reporting requirements.

We also suggest that the university clarify under what circumstances the names of persons reporting sexual assaults can be kept confidential. There appear to be different standards of confidentiality depending on what is reported and who is involved in the allegations. A single case of alleged misconduct may involve a criminal investigation, a student disciplinary action, an employee misconduct case, and an annual report of the allegation with no names identified. The confidentiality available to a reporter in one portion of the case may not be available to the same reporter in other portions. In this case, by the time [REDACTED] and [REDACTED] finished their reporting of the incident to various officials, they were confused about whether or not their names might be made public. We believe the confusion arose because different university offices were collecting these reports for different purposes to comply with different legal requirements. Persons reporting such incidents are understandably concerned about what will happen to them as a result. It might help for those university offices

likely to receive reports to have written guidance from university legal staff about how to respond to questions about confidentiality.

VIII. Concluding Thoughts

This has been a tragic and deeply disturbing experience for John Doe, his fellow student employees and the staff in the Athletic Department. What has been alleged is not only a sexual assault but also a serious breach of trust within a community that we heard described repeatedly by student employees as a tight-knit and supportive family. That the department's staff and student employees alike have had such high regard for Chadima exacerbates the difficulty they have in understanding what has happened. Barry Alvarez, Sean Frazier and the other senior administrators are well aware of the painful impact that this has had on their staff and are eager to begin the healing process. We wish them well.

Appendix A

John Doe and 9 other student employees, Athletic Department

Barry Alvarez, Director of Athletics

Lori Berquam, Dean of Students

Walter Dickey, Senior Associate Athletic Director

John Dowling, Senior University Legal Counsel

Sean Frazier, Deputy Athletic Director

Randy Marnocha, Associate Athletic Director for Business
Operations

Becci Menghini, Chief of Staff, Office of Chancellor

[REDACTED]

Lisa Rutherford, Director, Administrative Legal Services

Jeff Savoy, Office of Campus Information Security, Division of
Information Technology

[REDACTED]

[REDACTED]

Holly Weber, Director Human Relations, Athletic Department

Appendix B



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**PRESS RELEASE
 FOR IMMEDIATE RELEASE – 1/19/2012**

STATEMENT OF JOHN CHADIMA

It has been my privilege to work with so many wonderful and talented people throughout my career at UW. I have resigned as associate athletic director from UW-Madison so as not to bring disrepute to the University of Wisconsin. I deeply regret leaving under these circumstances and disappointing those people with, and for whom, I have worked and dedicated my career for the past 22 years. I make no excuses and accept full responsibility for my actions.

I would like to express my heartfelt apologies to the University of Wisconsin-Madison, its athletic department, and all full-time, part-time and student employees who have been affected by my recent lapse of judgment. I ask for their forgiveness.

Although I am unsure about what my future holds, UW-Madison will always be my family, my life and my home. Thank you.

Appendix C



Police Department
UNIVERSITY OF WISCONSIN-MADISON

To: UW Madison Deans and Directors
 From: AVC/Chief Susan Riseling *Susan Riseling*
 Subject: Crime Prevention Objectives and Reporting Obligations
 Date: December 13, 2011

After allegations of abhorrent crimes by an Assistant Coach at Penn State this autumn University of Wisconsin System President Kevin Reilly ordered a comprehensive review of Crime Prevention and Reporting issues for all of the UW System. Recommendations were compiled by System General Counsel Tomas Stafford and communicated to the President, who followed with a letter to the Regents and Chancellors last week. We felt it important to summarize these letters and to communicate expectations to our Deans and Directors.

Crime Prevention

The UW System recommendations cited many UW Madison Police initiatives, including crime prevention tips and our newsletters at uwpd.wisc.edu, prevention messages at SOAR, the many thousands of alarms and nearly 1000 video cameras on our campus.

In addition to the cited initiatives, Badger Watch is a very effective program, using trained volunteers to report suspicious activities in many UW buildings. There are four community police officers assigned to specific areas of campus. Longstanding community-oriented programs such as UWPd's Resident Halls Liaison Program and the Citizen Academy form invaluable partnerships. Detectives trained in threat assessment and Clery reporting assure that a network of professionals on campus are apprised of serious issues as they arise, and that relevant information from Wisconsin's Sex Offender Registry is available to the university community. Because of these programs and dozens of others, crime prevention is accomplished every day by students, staff and faculty. In fact, in 2008, 2009, and 2010, crime reached historic lows on the UW Madison campus.

Reporting Requirements

The federal Clery Act includes detailed reporting requirements for all universities regarding crimes. At UW Madison the Dean of Students Office and UWPd lead the university's strict adherence to these requirements.

The federal Title IX law is best known for requiring gender equality for athletic programs. It also includes obligations for universities regarding conditions that may promote sexual violence or even harassment. In addition to the formal compliance efforts

Chief Susan Riseling, Associate Vice Chancellor.



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the Athletic Department, UW Madison has a committee led by the Office of Equity and Diversity that monitors Title IX issues related to personal safety and is working to assure related compliance and education efforts.

Wisconsin Statute 36.11(22)(c) requires any employee who witnesses or receives a report about a sexual assault to report the incident to the Dean of Students. It acknowledges that some victims choose not to report an assault to the police, while requiring employees who receive a report of a sexual assault to report to the Dean of Students. However, this does not change the need to call police for crimes in-progress.

Wisconsin Statute 48.981(2), the mandatory reporter law, requires people with a professional relationship through which they learn of abuse or neglect of a child to report to the Dane County Department of Children and Families or to police.

Wisconsin Statute 940.34(2) requires anyone who knows that a crime is being committed that exposes a person to bodily harm to report the crime to police. Regent Policy (RPD) 20-19, the UW System Criminal Background Check Policy, was cited as an effective tool to reduce the likelihood of a sexual criminal being placed in a position of trust.

Leadership in Action

The subsequent letter from President Reilly announced that there will be an audit of policies system-wide that are related to reporting crimes against minors.

It also states:

"... we all agree that UW faculty and staff must act with a high degree of integrity, especially when it comes to the health and safety of our learners. We must find opportunities to remind our UW colleagues about our solemn moral obligation to protect those who are most vulnerable, including children."

In 2008 more than 750 events and programs involving 50,000 children occurred on UW System campuses.

The letter closes with President Reilly's thanks for our leadership in this regard. I will close with the Golden Rule of crime prevention: Safety is everyone's business, and violent crime must be reported to police.

As Deans and Directors, please ensure your staff know and understand their reporting obligations.

Appendix D

Subject: Sexual Assault, Harassment, and Consensual Relationships
From: Office of the Provost <provost@provost.wisc.edu>
Date: 26/10/2011 14:38
To: menghlni@chancellor.wisc.edu

MEMORANDUM

October 26, 2011

[link to [memo in Chinese](#)]
 [link to [memo in Hmong](#)]
 [link to [memo in Spanish](#)]
 [link to [memo in Tibetan](#)]

To: All University Employees
From: Paul M. Deluca, Jr., Provost and Vice Chancellor for Academic Affairs
Re: I. Mandatory Sexual Assault Reporting
 II. Sexual Harassment/Consensual Relationships Information
 III. Title IX Compliance Responsibilities

The University of Wisconsin-Madison strongly supports efforts to create a safe and positive campus climate for people to work and study. I ask that you take a few minutes to review this information.

Becoming familiar with the resources described here will help you respond appropriately, compassionately and effectively if you are approached by a student or fellow employee who experiences discrimination, sexual harassment, dating or domestic violence, stalking, or sexual assault. This letter also describes your obligation to report sexual assault in accordance with campus policy and state law and addresses expectations and resources available to comply with Title IX of the Education Amendments of 1972. Contact information for campus officials can be found at the end of this memo.

I. Mandatory Sexual Assault Reporting

One important way we measure progress toward our goal of creating a safe and positive environment for work and study is to record and report incidents of sexual assault. Wisconsin law (Chapter 36.11(22), Wisconsin Statutes) requires that UW-Madison report annually to UW System Administration the number of sexual assaults that occurred on campus and in certain surrounding areas. For UW-Madison to comply with state law, we need the cooperation of all university employees.

Dean of Students Lori Berquam has articulated Principles in Responding to Sexual Assault for the Division of Student Life and our campus community. In addition, University Health Services and EVOC (End Violence on Campus) university and community partners have published a resource guide Information for Faculty, Staff, and TAs: Sexual Assault, Dating Violence, and Stalking outlining steps to take if an individual discloses his or her experience to you.

If you witness a sexual assault on the UW-Madison campus or in the immediate surrounding area, or if you receive a first hand report of sexual assault, Wisconsin law requires that you report the sexual assault to university officials, specifically the *Office for Equity & Diversity (OED)* or the *Dean of Students*

office. This notification is not the same as filing a criminal report. Disclosing the victim's name is not required as part of this report.

Employees who witness or receive a first hand report of sexual assault should contact the Office for Equity & Diversity, which has been designated to receive reports from employees.

Students who experience, witness, or receive a first hand report of sexual assault are strongly encouraged to contact the Dean of Students office in the Division of Student Life, which has been designated to receive reports from students and will assist them in their healing process.

The Office for Equity & Diversity and Division of Student Life provide a comprehensive report annually to UW System. Recent UW-Madison reports and information about crime prevention, emergency procedures, and safety resources are posted on the Campus Safety website.

UW-Madison relies on reports from employees, students and other members of the university community to support victims as well as to meet our legal obligations. Please contact the Office for Equity & Diversity or the Dean of Students office if you have any questions about sexual assault reporting requirements.

II. Sexual Harassment/Consensual Relationships Information

The Sexual Harassment Information & Resources Initiative is an ongoing effort to heighten campus awareness about sexual harassment and consensual relationship issues and increase our effectiveness in addressing these important concerns. At information sessions available to any campus unit, we offer information about the law, university policies and campus resources, and provide advice on how to respond compassionately and effectively. Information session attendance is required for all faculty and staff with Limited Appointment titles.

Our Sexual Harassment Information & Resources website (<http://www.oed.wisc.edu/sexualharassment/>) and companion brochure, *Sexual Harassment: Defining and Addressing a Community Concern*, explain the University of Wisconsin-Madison's policies on sexual harassment and consensual romantic or sexual relationships. They provide information and guidance on what to do if an individual is harassed, accused of harassment, or contacted by someone who believes he or she has been harassed. In addition, they highlight responsibilities of individuals in positions of authority (principal investigators, supervisors, managers, department chairs, directors, and deans). Both web and print materials include additional information about campus safety, sexual assault reporting requirements, and resources for preventing and responding to sexual assault. The policy on consensual relationships is found at <http://www.secfac.wisc.edu/governance/legislation/Pages300-399.htm#307>.

The University of Wisconsin-Madison is committed to prevention and will take prompt and appropriate action whenever it learns that sexual harassment has occurred. You are encouraged to report incidents or concerns to your supervisor, manager, department chair, director, or dean for appropriate action and resolution. Sexual harassment (and other prohibited harassment or discrimination) also may be reported to the Office for Equity & Diversity, or to campus administrative offices identified in our Sexual Harassment Information and Resources website and brochure. You may contact any resource for information and assistance.

Please address questions about this campus-wide initiative to Luis Pi-ero.

If you wish to schedule a sexual harassment information session for your unit, please contact Patricia Carol, Office Manager, Office of the Provost, plcarol@provost.wisc.edu, 262-5246.

III. Title IX Compliance Responsibilities

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. UW-Madison prohibits discrimination in employment and all University programs and activities on a wide variety of grounds, including discrimination on the basis of sex. These prohibitions are outlined in University policies and procedures; a list of bases for filing a complaint alleging discrimination with the University can be found at: www.oed.wisc.edu.

The University provides a variety of resources concerning sex discrimination and sexual harassment. Students inquiring about sex discrimination, including sexual harassment, or about how to file a complaint of discrimination on these bases, should be directed to the appropriate University resource including the campus Title IX Coordinator, the Special Assistant to the Provost/Complaint Investigator or to the Division of Student Life.

A complaint procedure for individuals who believe they have been discriminated against on the bases covered by UW-Madison, including sex discrimination and sexual harassment is available at, <http://www.oed.wisc.edu/disha.html>. Faculty, staff, students, and visitors to campus who wish to file a complaint or have questions about the complaint procedures may contact Luis Pi-ero, campus Title IX Coordinator or Stephen Appell, Special Assistant to the Provost/Complaint Investigator.

Additional Title IX information and resources are available at, <http://www.oed.wisc.edu/titleIX.html>.

University Officials:

Luis Pi-ero, Assistant Vice Provost for Workforce Equity & Diversity; Director, Office for Equity and Diversity; Title IX Coordinator
lapinero@vc.wisc.edu
 Room 179A Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 53706
 Telephone: 608-263-2378
 Wisconsin Telecommunications Relay Service, 7-1-1
 FAX: 608-263-5562

Lori M. Berquam, Dean of Students
 Division of Student Life
 70 Bascom Hall, 500 Lincoln Drive
 Madison, WI 53706-1380
 Phone: 608-263-5700
 Fax: 608-263-5646
 TTY: 608-890-1682
 E-mail: dean@studentlife.wisc.edu

Stephen Appell, Special Assistant to the Provost/Complaint Investigator and Assistant Director, Office for Equity and Diversity
 Room 179A Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 53706
 Telephone: 608-263-2378
 Wisconsin Telecommunications Relay Service, 7-1-1

Appendix E

Subject: A Message Regarding Mandatory Reporting of Crimes On and Off Campus
 From: Dean of Students Lori Berquam <dean@studentlife.wisc.edu>
 Date: 12/12/2011 11:30
 To: menghinl@chancellor.wisc.edu

Dear members of the UW-Madison community,

By now, I'm sure that you are all familiar with the disturbing allegations regarding sexual assault that have arisen at other campuses across the country. While those incidents will be played out in the media and the judicial system, we as educators and students need to discuss how we must respond when such allegations arise. UW-Madison is a learning community, and the right for all people to feel safe on campus is fundamental to our community. Each of us has a responsibility, both ethical and legal, to uphold the safety and well-being of our campus.

To put it more plainly: If you see something, say something. In many cases, a failure to report has more than just moral implications; by allowing improper conduct to go unreported, you may put the safety of the victim and the stature of our institution at risk. The U.S. Department of Education and the courts have made it clear that Title IX of the Education Amendments of 1972 offers all of us protection from sexual harassment or sexual violence in our educational programs or activities.

And when it comes to children and suspicion of child sexual abuse, the law is very clear, and the university requires members of its community — faculty, staff and students — to report any suspected incidents. We are reinforcing the reporting process with units that interact with children.

Violations or concerns about possible violations of Title IX and/or the university's discrimination policies — even if they don't rise to the level of criminal behavior — should be immediately reported to the Office of Equity and Diversity at <<http://www.oed.wisc.edu>> or 608-263-2378, or to the Wisconsin Telecommunications Relay Service, 7-1-1.

The following resources are available to the UW community to bring issues and concerns to the attention of the university and/or law enforcement:

- Emergencies: 911
- UW Police Department: 608-264-2677 (264-COPS)
- Madison Police Department: 608-261-9694
- UW-Madison Safety Website: <<http://safeu.wisc.edu>>. SafeU provides links to campus safety resources, as well as copies of the Campus Safety Report.
- Dean of Students Office: 608-263-5700
- Employee Assistance Office: 608-263-2987. All contacts with EAO are confidential.
- UHS 24-Hour Crisis Line: 608-265-6565. This number can be used both by those suffering from stress or mental health issues and by those who believe that someone they know may need help.

These reports will be evaluated, and the proper intervention and assistance will be offered to individuals as needed, with the utmost respect for the privacy and legal rights of all those involved. X

Again, if you see something, say something. The resources identified above are

available to assist you. UW-Madison takes allegations of illegal or unethical behavior seriously. Allegations brought to the university's attention will be reviewed, and appropriate follow-up action will be taken.

Thank you for your time and attention. By working together, we can help to keep all members of our community safe.

On, Wisconsin!

Lori M. Berquam
Dean of Students
Division of Student Life

Appendix F

1/12/2012



If you see something, should you say something?

Wisconsin's Abuse and Neglect Reporting Requirements

By: Lisa A. Wilson, Senior University Legal Counsel
Rachel Zech, Associate University Legal Counsel
UW-Madison, Administrative Legal Services

Common Misconceptions

- Pedophiles look or act creepy
 - A former Syracuse ball boy and his stepbrother, accused Fine of molesting them. University officials investigated, but closed the matter, noting in part that close friends and acquaintances of Fine found it hard to believe that he could possibly molest a child.

Common Misconceptions

- Children tell someone if they are being abused
 - Children almost never tell for many reasons, including fear, threats of harm to their parents or family, embarrassment and shame, confusion, and loyalty to abuser.
 - If they tell anyone, likely will be someone seen as a "peer".

Common Misconceptions

- Adults who disclose they were abused as children are lying
 - Often the realization that reporting is appropriate requires maturity, knowledge of available resources and support.
- Subsequent victims are just looking to capitalize
 - Once a report has been made and the abuser known, it is easier for victims to come forward.
 - They no longer bear entire responsibility for "consequences" to abuser.
 - They feel more likely they will be believed.

What Must be Reported under WI Law

- Reasonable cause to suspect that
 - a child seen by the person *in the course of professional duties* has been abused or neglected; or
 - has been threatened with abuse or neglect and that abuse or neglect will occur
 - Pay attention to not only what colleagues are doing, but what might be happening at home

What Must be Reported

- "Abuse" means:
 - Physical injury inflicted on a child other than by accidental means
 - Sexual intercourse or sexual contact
 - This is not limited to rape
 - Penn State officials described "horseplay"
 - Sexual exploitation of a child
 - Including child to engage in sexually explicit way for purpose of recording or displaying conduct
 - Sale or possession of child pornography

1/12/2012

What Must be Reported

- "Abuse" means (continued):
 - Permitting, allowing or encouraging a child to engage in acts of prostitution (for "anything of value")
 - Causing child to view or listen to sexually explicit conduct
 - child camp counselor
 - Causing child to expose genitals or exposing genitals to child
 - Manufacturing methamphetamine in presence of a child or in child's home

What Must be Reported

- "Abuse" means (continued):
 - Emotional damage for which child's parent or guardian has neglected, refused or been unable for reasons other than poverty to obtain necessary treatment or take steps to ameliorate
- "Neglect" means:
 - Failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of a child

Who Must Report

- **Required** reporters include physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, school teacher, school administrator, school counselor, mediator, child-care worker in daycare center, day-care provider, AODA counselor, physical therapist or assistant, occupational therapist, dietician, speech language pathologist, audiologist, EMT, first responder, police.

Who Must Report - Update

- Executive Order #54
- All University of Wisconsin System (UWS) professors, administrators, coaches, and other UWS employees shall report child abuse or neglect immediately if the employee, *in the course of employment*, observes an incident or threat of child abuse or neglect, or learns of an incident or threat of child abuse or neglect, and the employee has reasonable cause to believe that child abuse or neglect has occurred or will occur
- Cannot be discharged from employment, disciplined or otherwise discriminated against in regard to employment, or threatened with any such treatment, for making good faith report

Who May Report

- Anyone else who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect will occur *may* report as provided for in the same manner as mandatory reporters
- Permissive reporters also have immunity from liability for good faith reports

How/When Must a Report be Made

- A person required to report *shall immediately inform*
 - by telephone or personally
 - the county department
 - or the sheriff or city, village or town police
 - facts and circumstances contributing to a suspicion of child abuse or neglect
- Despite "immediate" language, court has stated that preliminary investigation to verify allegations before reporting is proper and does not negate immunity under statute (*Phillips v. Behnke*, 192 Wis.2d 552 (1995))



1/12/2012

Immunity from Liability

- Any person or institution participating in good faith in making of a report, conducting an investigation, ordering or taking photographs, or ordering or performing medical exam of a child shall have immunity from liability, civil or criminal
- Immunity is not limited only to the reporter, but also to individuals who participate in the process
 - Limit communications to persons with legitimate interest
- Graduate assistant in Penn case would not have immunity

Liability for Failure to Report

- Mandatory reporters who fail to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.



Confidentiality of Reports

- All reports made and records maintained by an agency and other persons, officials and institutions shall be confidential
- May be limitations (e.g. narrow statutory exceptions for persons with an interest, subpoena, court order)

Sexual Assault

- By statute, any person employed at an institution who witnesses a sexual assault on campus or receives a report from a student involved in the institution that the student has been sexually assaulted shall report to the Dean of Students of the institution
 - Violations policy directs employees to report to the Office for Equity & Diversity
- Annually, the board shall submit a report to the chief clerk of each house of legislature for distribution to appropriate standing committees regarding institutions efforts to provide new students with information on sexual assault and harassment
- Annually, each institution shall report to office of justice assistance in department of administration, statistics on sexual assaults and on sexual assaults by acquaintances of victims that occurred on each campus of the institution in the previous year
- The office of justice assistance shall include the statistics in appropriate crime reports published by the office

Duty to Aid Victim or Report Crime

- Wisconsin Criminal Code
- Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim. Violation is a Class C misdemeanor.
 - Penn State graduate assistant would have been criminally liable under WI law.

Exceptions to Duty to Aid or Report

- A person need not comply with this requirement if any of the following apply:
 - Compliance would place him or her in danger,
 - Compliance would interfere with the duties the person owes to others,
 - Assistance is being summoned or provided by others.
- Note that this statute does not create a privilege or a defense to another crime, i.e., it does not allow you to assault the person committing the crime. *State v. Dillard*, 1996 WL 658377 (Wis. Ct. App. Nov. 14, 1996).

1/12/2012

Immunity for Aiding Victim

- If a person renders emergency care for a victim, s. 895.48(1) applies (Good Samaritan Immunity for emergency care). Any person who provides other reasonable assistance under this section is immune from civil liability for his or her acts or omissions in providing the assistance. This immunity does not apply if the person receives or expects to receive compensation for providing the assistance.

Person Responsible for Child's Welfare

- Numerous sections of the W. criminal code criminalize the failure by a "person responsible for the child's welfare" to protect a child from certain crimes. See, e.g., s. 94B.02 (sexual assault of a child); 94B.03 (physical abuse of a child); 94B.04 (causing mental harm to a child); 94B.05 (sexual exploitation of a child); 94B.06 (incest with a child); 94B.21 (neglecting a child).
- "Person responsible for the child's welfare" includes the child's parent, stepparent, guardian, foster parent, an employee of a public or private residential home, institution, or agency, or other person legally responsible for the child's welfare in a residential setting, or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child" s. 94B.01(3) (emphasis added).



Courts Interpret Responsibility Broadly

- A care taker with no familial relationship nor subject to any licensing requirements may fall within this definition. *State v. Hughes*, 285 Wis.2d 718 (Wis. Ct. App. 2005) (criminal defendant fell within definition because she temporarily provided housing and care for child after child's mother was evicted. There is no requirement that the caretaker be eighteen years old. i.e. juvenile caregiver not met definition).
- "All that is necessary for this element of the crime to be proven is that the person legally responsible for the child's welfare 'make use of a person' for the child's welfare, a true employee/employer relationship is not necessary. *State v. Ward*, 223 Wis.2d 301 (Wis. Ct. App. 1999) (hoist of sleep over for neighborhood children). See also *State v. Jettre*, 238 Wis.2d 408 (Wis. 1999) (live-in boyfriend of child's mother who provided voluntary care).

Duty to Warn



- May be duty to warn third-parties when there is a foreseeable risk that action or failure to act may cause harm
 - Suicidal ideations (Virginia Tech and Cornell are being sued by parents of suicide victims)
 - Substance abuse/eating disorders
 - Hazing (Florida A&M will likely be sued by parents of student who died in band hazing)
 - Homicidal ideations (Virginia Tech and NIU)
- UW Threat Assessment Team

Other Consequences for Failure to Act

- First civil suit filed against Sandusky, the Second Mile charity he founded, and Penn State
 - The suit seeks compensatory and punitive damages from Second Mile, Penn State and Sandusky
 - It alleges that the two organizations were "negligent in managing the risk posed to children" by Sandusky and failed to provide the "duty of care" owed to children in their care
- Negligent hiring/supervision
 - Background checks

What About FERPA?



- Observations not "education records", unless reduced to writing
- Can disclose information from education record without student consent to:
 - School officials with a "legitimate educational interest", or
 - For health and safety emergency
 - Permits disclosure to "appropriate party"
 - Where necessary to protect the health or safety of student or others
 - What constitutes an "emergency" and an "appropriate party" should be decided on a case-by-case basis
 - Document conclusions in writing