

Plain Language Analysis of Proposed Rule

Chapter UWS 18, Wisconsin Administrative Code

Conduct on University Lands

The Board of Regents of the University of Wisconsin System's authority to promulgate the proposed rule is found in Wisconsin Statutes, Section 36.11(1)(a), which states: "The board may promulgate rules under ch. 227 to protect the lives, health and safety of persons on property under its jurisdiction and to protect such property and to prevent obstruction of the functions of the system." Authority also is found in Wisconsin Statutes, Section 36.11(1)(c), which states: "The board may promulgate rules under ch. 227 for the management of all property under its jurisdiction, for the care and preservation thereof and for the promotion and preservation of the orderly operation of the system in any or all of its authorized activities and in any or all of its institutions." Finally, authority is found in Wisconsin Statutes, Section 36.09(1), which states: "The primary responsibility for governance of the system shall be vested in the board which shall enact policies and promulgate rules for governing the system."

The proposed rule amends Chapter UWS 18.11(1) and Chapter UWS 18.11(3) to: (a) remove the words "annoy" and "offend"; (b) add language containing the legal standard for hostile environment harassment set forth by the U.S. Supreme Court; (c) expand protection from electronic or telephonic harassment beyond those communications that involve obscene, lewd or profane language, or language suggesting any lewd or lascivious act, as currently stated in the code; and (d) add language prohibiting threatening or intimidating electronic or telephonic communications that meets the legal standard for a "true threat" as set forth by the U.S. Supreme Court.

The Board of Regents recognizes its duty to protect members of the University community from electronic or telephonic harassment while also respecting individual free speech rights. After reviewing the issue, the Board has determined that the proposed amendments to UWS 18.11(1) and UWS 18.11(3) are necessary to address concerns that current code language may impinge on free speech rights and also to expand protections against electronic or telephonic harassment beyond those currently contained in the code.

The federal government generally has not legislated or regulated in the area of conduct on University lands. Federal statutory and rule prohibitions are in place on sexual harassment and sexual violence under the federal Title VII and Title IX laws. Federal statutory and rule prohibitions also are in place on racial harassment under Title VI. The federal government currently is promulgating additional federal administrative rules under Title IX on sexual harassment and violence.

Public universities in Illinois, Michigan, Iowa and Minnesota have individual policies and procedures regulating conduct on their property and lands. On information and belief, the public universities in these four, neighboring states have policies regulating conduct on their property,

and policies specifically relating to electronic or telephonic harassment, similar to the proposed rule here.

The proposed rule is not expected to have any economic or fiscal impact on specific businesses, on business sectors (including small businesses), or on the State of Wisconsin's economy as a whole.

The Board of Regents received one written comment from the public on the scope statement of proposed rule changes to UWS Chapter 18. No speakers voiced their opinion on the scope statement at the public hearing held on November 15, 2019. The written comment supported the changes describe in the scope statement.

A summary of the written comment on the proposed scope statement was provided to the Board of Regents and to staff and taken into account in drafting the proposed rule.

The Board of Regents will accept written comments on the potential economic impact of the proposed rule until January 27, 2020. Comments may be submitted: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form-chapter-uws-18-wis-admin-code/>; (2) by email to board@uwsa.edu; (3) by mail to Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

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