

Friday, October 11, 2019

**APPROVAL OF NOTICE OF PRELIMINARY PUBLIC HEARING ON  
ADMINISTRATIVE CODE SCOPE STATEMENT FOR CHAPTER UWS 18****REQUESTED ACTION**

Adoption of Resolution II.13., approving the Notice of Preliminary Public Hearing on Administrative Code Scope Statement for Ch. UWS 18, Wis. Admin. Code, "Conduct on University Lands."

**Resolution II.13.** That, upon recommendation of the President of the University of Wisconsin System, the Board of Regents approves a Notice of Preliminary Public Hearing on a scope statement for the revision of Ch. UWS 18, Wis. Admin. Code, "Conduct on University Lands."

**SUMMARY**

UW institutions currently have authority to regulate conduct on University property, including authority to prohibit certain offenses against public peace and order. That authority includes imposing fines on individuals that intentionally harass another individual through electronic communications or telephone calls. The proposed rule modification would change the language regarding what constitutes an offense against peace and public order through email or other electronic communication or telephone use under UWS 18.11(1) and (3).

The proposed modification to UWS Chapter 18 would change the language in UWS 18.11(1) and (3), which generally prohibit a person from using email or other forms of electronic communications or phones to intentionally harass another person. This includes communications using obscene, lewd or profane language or suggesting any lewd or lascivious act sent with intent to harass, repeated communications sent with intent to harass, and anonymous communications sent with intent to harass. The current language prohibits such action when undertaken "with the intent to harass, annoy or offend another person." The proposed modification contemplated by the scope statement would eliminate references to the words "annoy" and "offend." Additionally, the scope statement contemplates expanding the prohibition of intentional harassment through electronic communications or telephone calls to include all electronic communications or telephone calls that use truly threatening or intimidating language. The prohibition on intentional harassment would not be limited to obscene, lewd or profane language or language suggesting any lewd or lascivious act.

The University's proposed scope statement for the amendment of Chapter UWS 18 to effectuate these penalties has been approved by the Governor and the DOA Secretary. The State Legislature's Joint Committee for Review of Administrative Rules (JCRAR) has directed that the University hold a preliminary public hearing and comment on the scope statement. Accordingly, the next step in the rulemaking process is Board of Regents approval of a proposed Notice of a Preliminary Public Hearing on the scope statement.

Regent approval of the Notice will result in publication of the Notice and the holding of a public hearing on the scope statement, followed by review of testimony and comments received on the scope statement, and Regent review and potential approval of the scope statement at a subsequent Board meeting.

## **BACKGROUND**

The University of Wisconsin System (UW System) seeks to modify the University of Wisconsin Board of Regents (Board) administrative rule, known as Ch. UWS 18, Wis. Admin. Code, "Conduct on University Lands." All UW System institutions would be affected by the proposed rule revisions articulated in the related scope statement.

The Board has statutory authority for Chapter UWS 18 under s. 36.09(1), Wis. Stats., which reads as follows: "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." Additional statutory authority comes from s. 36.11(1)(a), Wis. Stats., 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 prevent obstruction of the functions of the system." The Board's statutory authority for Chapter UWS 18 also originates in s. 36.11(1)(b), Wis. Stats., which provides: "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 system in any or all or its authorized activities and in any or all of its institutions...."

## **Related Policies**

- Regent Policy Document 4-21, "Commitment to Academic Freedom and Freedom of Expression"

## **ATTACHMENTS**

- A) Scope Statement
- B) Proposed Notice of Preliminary Hearing on Scope Statement
- C) Governor Approval of Scope Statement
- D) JCRAR Letter Directing Preliminary Public Hearing on Scope Statement

# STATEMENT OF SCOPE

## Board of Regents of the University of Wisconsin System

**Rule No.:** Chapter UWS 18

**Relating to:** Conduct on University Lands

**Rule Type:** Permanent

**1. Finding/nature of emergency (Emergency Rule only):**

N/A

**2. Detailed description of the objective of the proposed rule:**

The Board of Regents of the University of Wisconsin System (Board) has been a leader in its support of freedom of expression. On October 6, 2017, the Board approved Regent Policy Document 4-21 on *Commitment to Academic Freedom and Freedom of Expression*, setting forth the expectations of the Board regarding freedom of expression.

Chapter UWS 18, Conduct on University Lands, regulates conduct on lands subject to Board control. Sections of Chapter UWS 18 relating to computer and telephone use contain certain language that should be clarified related to freedom of expression. Therefore, the Board seeks to modify this section to clarify this language, while maintaining the protections provided by the section.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Chapter UWS 18.11, Offenses Against Public Peace and Order, includes UWS 18.11(1), Computer Use. UWS 18.11(1) generally prohibits a person from using email or other means of electronic communication to intentionally harass another person. This includes electronic communications using obscene, lewd or profane language or suggesting any lewd or lascivious act sent with intent to harass, repeated communications sent with intent to harass, and anonymous communications sent with intent to harass. UWS 18.11(1) uses the terms "annoy" and "offend" in addition to "harass."

Chapter UWS 18.11 also includes UWS 18.11(3), Improper Use of Telephones. UWS 18.11(3) generally prohibits the use of a telephone to intentionally harass another person. The section uses the term "offend" in addition to "harass."

After careful consideration, the Board believes that the protections provided by UWS 18.11(1) and (3) would be maintained and enhanced by removing the references to "annoy" and "offend" and by expanding the prohibition of intentional harassment through electronic communications or telephone calls to include all electronic communications or telephone calls that use truly threatening or intimidating language. The prohibition on intentional harassment would not be limited to obscene, lewd or profane language or language suggesting any lewd or lascivious act.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wisconsin Statute § 36.09(1) 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." Wisconsin Statute § 36.11(1)(a) 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 prevent obstruction of the functions of the system" Wisconsin Statute § 36.11(1)(b) 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 system in any or all or its authorized activities and in any or all of its institutions . . . ."

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

50 hours

**6. List with description of all entities that may be affected by the proposed rule:**

All University of Wisconsin institutions, and persons subject to the provisions of Chapter UWS 18.


**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

N/A

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

There is no anticipated economic impact of the proposed rule.

**Contact Person:** Raymond Cross, President of the University of Wisconsin System, 608-262-2321

  
\_\_\_\_\_  
Department Head or Authorized Signature  
  
9/25/2018  
\_\_\_\_\_  
Date Submitted

**NOTICE OF PRELIMINARY PUBLIC HEARING  
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM**

November 15, 2019  
9 a.m. to 11 a.m.  
Sonata Room, Gordon Dining and Event Center  
770 W. Dayton Street, Madison, Wisconsin

The Board of Regents of the University of Wisconsin System will hold a preliminary public hearing on the proposed scope statement to amend Chapter UWS 18, Wis. Admin. Code, to address conduct on University lands related to improper use of email and other electronic communications and of telephones to harass another person.

**Appearances at the Hearing and Submittal of Written Comments**

UW System personnel or a member of the Board of Regents will preside over the preliminary public hearing on the scope statement, on behalf of the Board of Regents, to provide interested persons with the opportunity to make an oral presentation on the proposed scope statement. Each individual who registers to speak will be given up to five minutes to give an oral presentation. Persons making oral presentations are requested to also submit their comments in writing.

The Board of Regents will accept written comments until November 20, 2019. Comments may be submitted: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form/> or [https://docs.legis.wisconsin.gov/code/scope\\_statements/all/013\\_19](https://docs.legis.wisconsin.gov/code/scope_statements/all/013_19); (2) by email to board@uwsa.edu; (3) at the public hearing; or (4) by mail to Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

To request a paper copy of the scope statement, contact the Office of the Board of Regents at the address above or by email at board@uwsa.edu or phone at (608) 262-2324. The scope statement is also available for review at [https://docs.legis.wisconsin.gov/code/scope\\_statements/all/013\\_19](https://docs.legis.wisconsin.gov/code/scope_statements/all/013_19). This site includes additional documents associated with this proposed permanent rule promulgation.

**Initial Regulatory Flexibility Analysis**

The proposed rules will not have an effect on small businesses, as defined under s. 227.114(1), Wis. Stats.

**Accessibility**

Persons with special needs or circumstances regarding communication or accessibility at the hearing should call Jess Lathrop, Executive Director, Office of the Board of Regents, at (608) 262-2324 prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

November 20, 2018

Ray Cross  
President  
The University of Wisconsin System  
1720 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

**RE: Scope Statement for UWS 18 relating to conduct on university lands**

Dear President Cross,

I hereby approve the statement of scope submitted on November 13, 2018 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule creating Chapter UWS 18 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker  
Governor



## JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

January 24, 2019

John Behling, President  
UW System Board of Regents  
Room 1860 Van Hise Hall  
1220 Linden Dr.  
Madison, WI 53706

Ray Cross, President  
University of Wisconsin System  
Room 1720 Van Hise Hall  
1220 Linden Dr.  
Madison, WI 53706

Dear Presidents Behling and Cross,

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the University of Wisconsin System and Board of Regents to hold a preliminary public hearing and comment period on Scope Statement SS 013-19, relating to conduct on university lands, which was published in the Wisconsin Administrative Register on January 22, 2019.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by University of Wisconsin System officials or boards until after the preliminary public hearing and comment period are held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Nass", written over a horizontal line.

Senator Steve Nass  
Co-Chair, JCRAR