

## BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

### **II. All Regents**

Friday, October 11, 2019  
9:00 a.m.

UW-Superior Yellowjacket Union  
Great Room  
1605 Catlin Avenue  
Superior, Wisconsin

1. Calling of the roll
2. Approval of the record of the July 11-12, 2019 Board of Regents meeting and the August 1, 2019 Board of Regents special teleconference meeting
3. Report of the President of the Board
  - A. Report(s) of the Wisconsin Technical College System Board
  - B. Update on the UW-Stout chancellor search process
  - C. Update on the UW-Green Bay chancellor search process
  - D. All In Wisconsin
4. Report of the President of the System
  - A. News around the System
  - B. Student spotlight
  - C. State budget update
5. Report and approval of actions taken by the Education Committee
6. Report and approval of actions taken by the Capital Planning and Budget Committee
7. Report of the Research, Economic Development, and Innovation Committee
8. Report and approval of actions taken by the Audit Committee
9. Report and approval of actions taken by the Business and Finance Committee
10. Presentation: Literacy Link—A Partnership to Positively Influence Children of Justice-Involved Parents
11. Presentation and discussion: UW System Math Initiative
12. Approval of Administrative Code Scope Statement for Proposed Changes to Chapter UWS 17

13. Approval of Notice of Preliminary Hearing on Administrative Code Scope Statement for Chapter UWS 18
14. Approval of a change to the Board of Regents regular meeting schedule
15. Election of new Assistant Trust Officer of the Board of Regents
16. Resolution of appreciation to UW-Superior for hosting the October 2019 meeting
17. Regent communications, petitions, and memorials
18. Optional Closed Session

Adjourn

*The closed session agenda for Thursday, October 10, 2019, may also be considered on Friday, October 11, 2019, as the Board's needs may dictate. In addition, the Board may reconvene in open session regarding matters taken up in the closed session, including voting, where applicable.*

**THE LITERACY LINK:  
A PARTNERSHIP TO POSITIVELY INFLUENCE  
CHILDREN OF JUSTICE-INVOLVED PARENTS**

**REQUESTED ACTION**

For information only.

**SUMMARY**

The Literacy Link is a University of Wisconsin-Madison (UW-Madison) Division of Extension pilot program that teams with a diverse group of county-based partners to foster positive, literacy-focused interactions between young children and their justice-involved parents/caregivers.

With funding from the UW System's President's Office, the project started in July 2017 as a two-year pilot under the leadership of university educators in Dane, Racine, Pepin, and Buffalo counties. Within a few months, it expanded to Ashland and Bayfield counties, and later to Dunn and Kenosha counties. County-based University Extension educators work in partnership with local jails, correctional systems, and libraries, utilizing UW-Extension resources to provide literacy-based educational activities, support services, evaluation tools, curriculum, and books. With its partners, The Literacy Link uses four primary strategies to (a) create literacy-rich environments and experiences at jail and justice settings and (b) promote positive, literacy-focused interactions between young children and their justice-involved parents/caregivers.

Over the past two years, The Literacy Link distributed over 1,900 new, high-quality books to children of justice-involved parents. It also reached over 340 parents with workshops covering the importance of reading to young children and practicing science-based, dialogic reading techniques shown to boost language skills and reading readiness. These strategies served as the foundation for the 1,000-plus literacy-focused engagements between parents/caregivers and children that utilized structured video visits, recorded book readings and child-friendly settings.

The Literacy Link pilot has demonstrated how to leverage countywide partnerships and resources to support the literacy needs of young, at-risk children in ways that connect

incarcerated parents with their children. UW System funding for this program goes through June 2021 with plans to expand the project to a total of 12 sites. Beyond this seed money, President Cross is encouraging interested private partners to carry forth a more robust effort statewide to engage at-risk children from justice-involved families in The Literacy Link.

### **Presenter**

- Mary Huser, Director of The Literacy Link, UW-Madison's Division of Extension and Public Media

### **BACKGROUND**

Research shows that children with incarcerated parents are at risk for delays in cognitive development and may experience socio-emotional difficulties. Research done at UW-Madison found that young children with a caregiver in a Wisconsin county jail experienced higher levels of emotional and conduct problems as well as delays in critical communication skills, particularly reading, talking, and listening. This can impede children's success in schools, which in turn limits their potential longer-term contributions to the local economy and community. The Literacy Link project addresses this need.

## **UNIVERSITY OF WISCONSIN SYSTEM MATH INITIATIVE**

### **REQUESTED ACTION**

No action is required; this item is for information only.

### **SUMMARY**

The University of Wisconsin System Math Initiative is designed to help students receive relevant mathematics education that aligns to their program of study, saves resources, supports retention and ultimately reduces time to degree. In targeting these goals, the Math Initiative also aligns with goals of the UW System 2020FWD Strategic Framework Educational Pipeline and University Experience priorities.

The Math Initiative began in March 2017 when the Office of Academic and Student Affairs Vice President called for a Math Steering Committee representative from each campus to build on the implementation of a common cut score for placement into gateway math (first college-level or foundation courses for a program of study) and advance Math Initiative goals to:

- Reduce the need for developmental mathematics courses
- Improve success of students in developmental and gateway mathematics
- Ensure transferability and applicability of gateway mathematics

The UW System Office of Academic and Student Affairs prioritized this work with financial and administrative resources. Great Lakes Higher Education Corporation & Affiliates (now Ascendium Education Group) awarded the UW System a \$2.3-million grant from January 2018 to December 2020 to support the Math Initiative. UW System is distributing approximately nine out of 10 grant dollars to UW institutions, with the remainder used to offset costs of data collection, data analysis, and professional development.

The October 11, 2019 presentation will provide Regents with an update on the process and progress in the first half of the grant period.

## **Presenter(s)**

- Carleen Vande Zande, Associate Vice President, UW System Office of Academic and Student Affairs, will open the presentation and Q&A period after the last panelist.
- Alice Pulvermacher, Principal Investigator, UW System Math Initiative Project Director, will introduce the Math Initiative goals, process and influence of the systemwide change management process, including a four-minute video featuring UW institution faculty, staff and administrators and a photo slideshow during the panel.
- Nick Danz, Dean of Academic Affairs and Graduate Studies and UW-Superior Math Initiative Institutional Change Team Lead, will discuss the impact of the Math Initiative at the institution level.
- Henry Habermann, UW-Superior student, will discuss personal experiences in a co-requisite gateway mathematics course, a strategy supported through the Math Initiative.
- Carrie Tirel, UW-Oshkosh, Fox Cities campus math faculty and UW System Math Initiative Project Team member, will discuss the intersection of restructuring and the Math Initiative.
- Jennifer Kosiak, UW-La Crosse math faculty and UW System Math Initiative Project Team member, will discuss connections with other Wisconsin education systems (PK-12 and WTCS), mathematics teacher education, and mathematics professional organizations.
- Barbara Bales, UW System senior academic planner and UW System PK-20 director, will discuss the opportunity to bridge gaps between high school and college mathematics through the newly formed Wisconsin Math Alignment Task Force.

## **BACKGROUND**

The Math Initiative developed a systemwide change management approach, with Institutional Change Teams at each UW institution to advance Math Initiative goals at their campuses and across the system. Each team includes representation from administration, institutional research, advising, faculty from partner disciplines and the Math Steering Committee member, and, for seven teams, their branch campuses. The Math Initiative Project Team built buy-in and supported cross-institutional collaboration through systemwide meetings and professional development, regular webinars to facilitate communities of practice, annual site visits, data collection and analysis, and digital

resources such as interactive data visualizations. Teams recognized opportunities to advance Math Initiative student success goals at their individual institutions and to contribute to systemwide change that supports student success, including through transfer of gateway mathematics courses and sharing of resources, such as an advising webtool developed by one institution for use by all UW institutions.

In 2018, the Math Steering Committee agreed on course descriptions and learning outcomes for common gateway math courses: College Algebra, Statistics, and Quantitative Reasoning. Institutional Change Teams explored course alignment within the broad discipline areas of STEM, Social and Behavioral Sciences, and Arts and Humanities. Teams updated participation in 2019 to include Business, Nursing/Health, and Education. The focus on Education programs is particularly timely due to changes in Wisconsin licensure standards. The Math Initiative formed an Education Subcommittee with representatives from each UW institution; they are reviewing and seeking agreement on core learning outcomes for 2020 implementation.

The changes referenced above will open or clarify math pathways for students, whether they have declared a major or only chosen a broad field of study, and whether they remain at a single institution or transfer within UW System.

At the same time, the Math Initiative continues to focus on strategies to reduce placement into developmental math courses and improve student success in both developmental and gateway math. For example, nationally recognized experts facilitated a September workshop for about 100 math faculty from around UW System. They focused on multiple measures for placement, co-requisite courses, and interactive classroom practices to foster student engagement.

UW System restructuring began during the grant period, so the Math Initiative Project Team incorporated support for communication and problem-solving among main and branch campus math faculty and staff. This intentional coordination helped ensure students' access to mathematics courses that support their success and retain or expand transfer of these courses.

Inter-system collaboration to support student transitions was initiated with technical college representatives in 2017 and recently included a September meeting with the Wisconsin Technical College System (WTCS) math representatives and the Math Initiative Project Team to introduce UW System agreed-on gateway mathematics courses descriptions and learning outcomes. With more than 3,000 WTCS students transferring to UW System institutions each year, UW-WTCS connections remain a priority.

To help ensure seamless transitions from PK-12 to post-secondary institutions in Wisconsin, UW System formed a core Wisconsin group representing urban and rural school districts, the Wisconsin Department of Public Instruction, and the UW System Math

Initiative. The core team participated in the Conference Board of Mathematical Sciences national High School to College Mathematics Pathways Forum in May 2019. The team expanded to include WTCS and additional PK-12 representatives to participate in the Wisconsin Math Alignment Task Force directed at bridging gaps between high school and college mathematics through August 2020.

Math Initiative next steps include continued implementation of data-informed decisions on multiple measures for placement, math pathways, gateway courses and transfer, co-requisites, bridge programs, and sustainable practices and structures.



**APPROVAL OF ADMINISTRATIVE CODE SCOPE STATEMENT FOR  
PROPOSED CHANGES TO CHAPTER UWS 17**

**REQUESTED ACTION**

Approval of Resolution II.12., approving Administrative Code Scope Statement for Ch. UWS 17, Wis. Admin. Code, "Nonacademic Student Misconduct."

**Resolution II.12.** That, upon recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Administrative Code Scope Statement for Ch. UWS 17, Wis. Admin. Code, "Nonacademic Student Misconduct."

**SUMMARY**

The University of Wisconsin System (UW System) Administration seeks to modify the Board of Regents (Board) administrative rule, known Chapter UWS 17, Wis. Admin. Code, "Nonacademic Student Misconduct." All UW System institutions are affected by the proposed rule revisions articulated in the scope statements.

The modifications that the scope statement describes reflect changes in Chapter UWS 17 that would require mandatory punishments for students who have been found responsible for misconduct that materially and substantially disrupted the free expression of others. The scope statement for the modifications to UWS Chapter 17 has already received Governor approval.

**BACKGROUND**

The Board of Regents (Board) has statutory authority for Chapter UWS 17 under s. 36.35, Wis. Stats., which reads as follows: "The board shall promulgate rules under ch. 227 governing student conduct and procedures for the administration of violations."

On October 6, 2017, the Board approved Regent Policy Document 4-21, "Commitment to Academic Freedom and Freedom of Expression," setting forth the expectations of the Board regarding academic freedom and freedom of expression, and the consequences for

those who violate the free expression of others. Section 2 of the policy contains a paragraph stating:

“A formal investigation and disciplinary hearing is required the second time a formal complaint alleges a student has engaged in violent or other disorderly misconduct that materially and substantially disrupted the free expression of others. Any student who has twice been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student’s enrollment shall be suspended for a minimum of one semester. Any student who has thrice been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student’s enrollment shall be expelled. *This paragraph shall be effective upon amendment of Chapter UWS 17 of the Wisconsin Administrative Code under Chapter 227 of the Wisconsin Statutes to include a parallel provision.* The report regarding repeat violators described in Section 5 of this policy will not be required after the effective date of the amendment to Chapter UWS 17.” (emphasis added)

Because Chapter UWS 17 of the Wisconsin Administrative Code has not yet been amended, as required by Wisconsin Statutes, Section 36.35(1), to include the mandatory discipline and the formal investigation and hearing described in Section 2 of the Regent policy, those provisions currently are not in effect. As noted in the Regent policy, those provisions will be effective upon completion of the rulemaking process.

Modifications to Chapter UWS 17 would include a new section that would require a formal investigation and disciplinary hearing the second time a formal complaint alleges that a student has engaged in violent or other disorderly misconduct that materially and substantially disrupted the free expression of others. The modification would also require that any student who has twice been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student's enrollment be suspended for a minimum of one semester. Finally, the modification would require that any student who has three times been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student's enrollment be expelled.

Approval from the Education Committee and the full Board of this scope statement is requested to advance the rule-making process to bring Chapter UWS 17 of the Wisconsin Administrative Code into conformance with Regent Policy Document 4-21.

### **Previous Action or Discussion**

On October 6, 2017, the Board approved Regent Policy Document 4-21, “Commitment to Academic Freedom and Freedom of Expression.”

On July 12, 2019, the Board approved the Notice of Preliminary Hearing on Administrative Code Scope Statement for Chapter UWS 17.

### **Related Policies**

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

### **ATTACHMENTS**

- A) Scope Statement
- B) Notice of Preliminary Hearing on Scope Statement
- C) Summary of Public Comments on Scope Statement
- D) Governor Approval of Scope Statement
- E) JCRAR Letter Directing Preliminary Public Hearing on Scope Statement
- F) Audio Recording of Preliminary Hearing: <https://bit.ly/2nz3sYj>

# STATEMENT OF SCOPE

## Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 17

Relating to: Nonacademic Student Misconduct

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 academic freedom and the 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 academic freedom and freedom of expression, and the consequences for those who violate the free expression of others.

The portion of the policy document that addresses student discipline requires that Chapter UWS 17 be modified to state when a formal investigation and hearing is required and the instances in which the disciplinary sanctions of suspension and expulsion must be invoked. Therefore, the Board seeks to modify Chapter UWS 17 regarding Student Nonacademic Misconduct, consistent with the Board's action on October 6, 2017 in approving the Regent Policy Document on *Commitment to Academic Freedom and Freedom of Expression*.

### 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 17 currently provides discretion to the investigating officer and provides a list of optional disciplinary sanctions for nonacademic misconduct. It does not specify when a formal investigation and disciplinary hearing is required, nor does it state mandatory sanctions for students found responsible for misconduct that materially and substantially disrupted the free expression of others.

The Board's *Commitment to Academic Freedom and Freedom of Expression* policy states that a formal investigation and disciplinary hearing is required the second time a formal complaint alleges a student has engaged in violent or other disorderly misconduct that materially and substantially disrupted the free expression of others. The policy also requires that any student who has twice been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student's enrollment shall be suspended for a minimum of one semester. Finally, the policy requires that any student who has three times been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student's enrollment shall be expelled. The Board policy states that these measures would be effective upon amendment of Chapter UWS 17 under Chapter 227 of the Wisconsin Statutes to include a parallel provision.

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

Wisconsin Statute § 36.35 states: "The board shall promulgate rules under ch. 227 governing student conduct and procedures for the administration of violations."

**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 the students thereof.

**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

  
\_\_\_\_\_  
Date Submitted

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

Tuesday, August 13, 2019  
3:00 p.m. to 5:00 p.m.  
Gordon Dining and Event Center – 2nd floor, Symphony Room  
770 W. Dayton Street, Madison, Wisconsin

The Board of Regents of the University of Wisconsin System will hold a public hearing on permanent rules to amend Chapters UWS 17, Wis. Admin. Code, to address student discipline related to violent or other disorderly misconduct that materially and substantially disrupts the free expression of others, when a formal investigation and disciplinary hearing is required, and mandatory sanctions for students found responsible for misconduct that materially and substantially disrupts the free expression of others.

**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 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 three 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 August 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](mailto: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](mailto:board@uwsa.edu) or phone at (608) 262-2324. The scope statement is also available for review at [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), 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.



**SUMMARY OF PUBLIC COMMENTS ON ADMINISTRATIVE CODE SCOPE STATEMENT FOR  
PROPOSED CHANGES TO CHAPTER UWS 17****Introduction**

The Board received thirty-eight written comments from the public on the scope statement of the Board's proposed rule change to UWS Chapter 17. In addition, nine speakers voiced their opinion on the scope statement at the public hearing held on August 13, 2019. While some of the speakers and commenters expressed support for the intention of the scope statement, everyone who spoke at the hearing ultimately opposed the scope statement, and all but one of the commenters did as well. One speaker at the hearing requested an in-person meeting with the Board of Regents.

**Concerns about Chilling Free Speech**

By far the biggest concern that the speakers and commenters had about the scope of the proposed rule is the fear that it would punish, rather than protect, the free speech rights of students. In particular, many commenters and speakers stated that they thought that the language of "disrupting the free expression of others" is vague and will lead to selective enforcement. For example, Timothy Yu, a professor of English and Asian-American Studies at UW-Madison questioned what specifically qualified as such disruption. He asked whether conduct such as holding hostile signs, publicly criticizing a speaker to the extent that a speaker cancels his or her visit, or arguing with a speaker constitutes a disruption of free expression. The ACLU had similar concerns.

Similarly, many of the commenters and speakers expressed their view that the rule would silence dissent on campus by threatening students with mandatory punishments.

Several commenters and speakers discussed specific students that have been punished at various UW System institutions over the years for exercising their free speech rights. These speakers and commenters were concerned that this rule, once in final form, would cause many students to be similarly punished. Some speakers and commenters also expressed the view that the rule would inhibit professors from teaching effectively by stifling participation.

Other commenters and speakers made suggestions on the scope that they believe could improve the rule when it is in its final form. The free-speech group FIRE proposed that a provision should be added to make clear that the policy only applies to disruptions of events taking place in reserved locations. Adding this provision, according to FIRE, would establish protections against a so-called “heckler’s veto”—in which hecklers do not allow a speaker to talk—while at the same time allowing for peaceful protest in a manner that does not drown out the speaker. Several commenters also suggested that the Board add a provision requiring that a student *intentionally* disrupt the free speech of others so that only students acting in bad faith are subject to discipline. In addition, FIRE recommended that the Board add a provision that would define what conduct is encompassed by the phrase “materially and substantially disrupts.” Finally, the Wisconsin Institute for Law and Liberty (WILL) suggested adding a provision that would clarify that constitutionally protected speech would not be punished.

### **Concerns about Impact on Oppressed Groups**

A related concern that many of the commenters and speakers had was that the rule would have a disproportionate impact on oppressed groups such as racial and ethnic



minorities, people with disabilities, and the LGBTQ+ community. Several commenters and speakers voiced their concern that oppressed groups often rely on the acts of protesters to effectuate social change. These commenters stated that the mandatory penalties from the rule would cause students to stop protesting, which would end up harming these traditionally disadvantaged communities. Some commenters and speakers opined that the rule would ultimately further entrench control of the universities in the hands of the rich and white.

### **Concerns about Punishment Scheme**

Besides concerns about the rule's impact on free speech, the most commented on aspect of the scope statement was the mandatory punishment scheme contemplated by the scope. Several commenters and speakers noted that no form of nonacademic misconduct in UWS Chapter 17 requires a specific punishment nor does Chapter 17 state that when a student is found guilty of the same offense on more than one occasion, his or her punishment should be harsher. These commenters and speakers wondered why a finding of guilt for disrupting free speech would potentially carry with it a more severe sentence than physical or sexual assault.

Additionally, several commenters expressed concern that instituting mandatory penalties would lead to a form of jury nullification in which students who have egregiously violated the code would be found to be innocent because the hearing committee would not want to impose the harsh punishments on the student. Many speakers and commenters stated that they thought this punishment scheme will take power away from the campuses because they would not be able to fashion punishments as they see fit. Jordan Ellenburg, a

professor of mathematics at UW-Madison, also noted that while the scope statement has a mandatory penalty for students, it is silent on the consequences for administrators or Regents who disrupt free speech. FIRE proposed a system that would make the punishment proportional to the specific offense. Finally, one commenter stated that the final rule should make clear that students charged disrupting free speech have the same appeal rights as students charged with other forms of nonacademic misconduct.

### **Legal Concerns**

At the hearing, Steph Tai, a professor of administrative law at the UW Law school, addressed concerns she had about the legality of the rule. Professor Tai stated that there were constitutional law as well as administrative law problems with the rule, regardless of the form it ultimately takes. Professor Tai noted that she is the faculty advisor for the Law School's moot court team and that two of the national competitions last year focused on this exact issue. According to Professor Tai, the judges at these competitions—who are actual judges—found two constitutional problems with similar rules: 1. The rules were impermissibly vague and 2. Constitutional concerns arise when intervening parties who are not students of a UW System institution arguably infringe on the free speech rights of others. Professor Tai also commented that there may be no “rational basis” for this rule, and so it may be problematic from an administrative law standpoint.

The ACLU had similar legal concerns as Professor Tai, noting that, when the rule takes its final form, it could potentially be held unconstitutional on First Amendment grounds. A lawyer named Gary Grass commented that the scope statement contains no “analysis of alternatives” as required by Wis. Stat. § 227.135(1)(b).

### **Concerns about the Politics of the Scope**

Another issue that several commenters and speakers had with the scope was that they viewed it as highly partisan. Some of the commenters stated that the policy document that the scope statement is based off had its origins in model legislation created by a conservative group called the Goldwater Institute. A number of the commenters and speakers went as far as to say that the scope statement represented a part of a nationwide partisan policy agenda. Others said that the scope was a reaction to headlines. A few commenters stated that a similar policy had recently been rejected by the state legislature, and that this rule was an attempt to revive that legislation. One commenter said that, if the rule is promulgated in a final form, it will lead to the spread of right-wing ideology on campus. All of these commenters and speakers opined that it is not the role of the university system to favor a political party.

### **Miscellaneous Concerns**

Many of the commenters and speakers had miscellaneous concerns about the scope statement as well. Several UW-Madison professors submitted a written comment in which they stated that, when the rule is in final form, it should specifically note the harms of a “heckler’s veto.” These professors also said that the final rule should require the universities to give students a “primer” on free speech on campus to introduce new students to the subject. At the hearing, Professor Timothy Yu expressed frustration that the Board of Regents Policy on which the scope statement is based was developed without consultation with university faculty. Another commenter suggested that *speakers* who incite disruptive behavior from students should be punished.

Commenter Gary Grass had several miscellaneous concerns with the scope statement. Mr. Grass stated that the rule is duplicative because there are already rules that punish the targeted conduct. Thus, Mr. Grass suggested that, when the rule is drafted, it should add text to UWS §§ 17.10-.12 rather than § 17.09. Mr. Grass also proposed several alternatives to the rule. He suggested that the Regents could mandate that campuses provide free expression programming—similar to PSAs—to its students. He also said that campuses could propose their own free speech policies.

### **Statement in Support**

A commenter named Nancy Suitor supported the scope statement, saying that it will help protect conservatives and Christians on campus.

## **Appendix: List of Written Commenters**

- Organizations
  - Defending Rights and Dissent
  - Foundation for Individual Rights in Education
  - One Wisconsin Institute
  - Student Government Association at the University of Wisconsin-Stevens Point
  - Unnamed Group of UW-Madison Professors
  - UW-Madison Academic Staff Assembly
  - Wisconsin Conference of the American Association of University Professors
  - Wisconsin Institute for Law and Liberty
- Individuals
  - Martha Alibali
  - Joe Austin
  - Joel Berkowitz
  - Kathryn "K.C." Cayo
  - Amy Dean
  - Jordan Ellenberg
  - Christine Evans
  - Nicholas Fleisher
  - William Fry
  - Gary Grass
  - W Lee Hanson
  - Michael Hill
  - Robert Jeske
  - Silas Johnson
  - Jennifer Jordan
  - Joyce Latham
  - Leslie LaMuro
  - Katherine Lavelle
  - Jennifer Nelson
  - Chukwudi Nnacheta
  - Mary Rendall
  - Apporv Saraogee
  - Jeffrey Sommers
  - Cheryl Soref
  - Michael Steele
  - Nancy Sutor
  - Eric Sullivan
  - Tristan Tully
  - SA Welch
  - Dang Yang



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

P.O. Box 7863  
MADISON, WI 53707

June 14, 2018

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

**RE: Scope Statement for UWS 17 relating to nonacademic student misconduct**

Dear President Cross,

I hereby approve the statement of scope submitted on March 29, 2018 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter UWS 17 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



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## JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

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

June 27, 2018

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

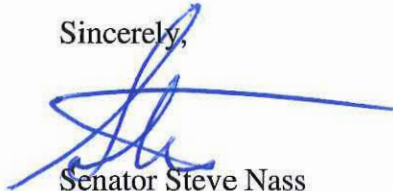
Ray Cross, President  
University of Wisconsin System  
Room 1720 Van Hise Hall  
1220 Linden Dr.  
Madison, WI 53706

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 071-18, relating to nonacademic student misconduct, which was published in the Wisconsin Administrative Register on June 25, 2018.

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,



Senator Steve Nass  
Co-Chair, JCRAR

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 "S. 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

**APPROVAL OF A CHANGE TO THE BOARD OF REGENTS  
REGULAR MEETING SCHEDULE**

**REQUESTED ACTION**

Adoption of Resolution II.14., modifying the Board's regular-meeting schedule for 2020.

**Resolution II.14.** That, upon the recommendation of the Executive Director and Corporate Secretary, the Board of Regents approves changes to the regular-meeting schedule for 2020 (attached).

**SUMMARY**

The Board is being asked to modify its regular-meeting schedule for 2020 to allow the Board of Regents Office to host the April 2020 meeting, instead of UW-Green Bay.

**BACKGROUND**

Chapter I, Section 2 of the Bylaws of the Board of Regents requires the Board to annually adopt a 12-month calendar of meeting dates and locations.

In June 2019, the Board of Regents approved a regular-meeting schedule for 2020, which included UW-Green Bay hosting the April 2-3, 2020 meeting. The proposed change to the schedule (attached) would allow the Board of Regents Office to host the April 2-3, 2020 meeting at the Gordon Dining & Event Center in Madison.

**Previous Action or Discussion**

- Resolution 11238, "Approval of 2020 UW System Board of Regents Regular Meeting Schedule"

**ATTACHMENTS**

- A) UW System Board of Regents Regular Meeting Schedule - 2020

DRAFT 9-11-2019

**UW SYSTEM BOARD OF REGENTS  
REGULAR MEETING SCHEDULE – 2020**

February 6-7, 2020 – Hosted by UW-Madison

March 5, 2020 – In Madison\* (Optional)

April 2-3, 2020 – In Madison\*

June 4-5, 2020 – Hosted by UW-Milwaukee

August 20-21, 2020 – In Madison\*

October 8-9, 2020 – Hosted by UW-River Falls

November 5, 2020— In Madison\* (Optional)

December 10-11, 2020 – In Madison\*

\*Hosted by the Board of Regents Office at Gordon Dining & Event Center