

07/17/2020



BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

I. All Regents

Via WebEx Videoconference

Monday, July 20, 2020

2:30 p.m.

1. Calling of the Roll
2. Declaration of Conflicts
3. Approval of Administrative Code Scope Statements for Chapter UWS 4, 7, 11 and 17 Permanent and Emergency Rules
4. Adjourn

Webex registration information and meeting materials can be found during the week of the meeting at <https://www.wisconsin.edu/regents/meetingmaterials/> or may be obtained from Jess Lathrop, Executive Director, Office of the Board of Regents, 1860 Van Hise Hall, Madison, WI 53706, (608) 262-2324. Persons with disabilities requesting accommodations are asked to contact Jess Lathrop in advance of the meeting.

Monday, July 20, 2020

APPROVAL OF ADMINISTRATIVE CODE SCOPE STATEMENTS FOR CHAPTERS UWS 4, 7, 11, AND 17, AND RULE DRAFTING GUIDANCE

REQUESTED ACTION

Adoption of Resolution I.3, approving the Administrative Code Scope Statements for Wisconsin Administrative Code, Chs. UWS 4 (“Procedures for Dismissal”); UWS 7 (“Dismissal of Faculty in Special Case”); UWS 11 (“Dismissal of Academic Staff for Cause”); and UWS 17 (“Student Nonacademic Disciplinary Procedures.”), as well as discussion of rule drafting decision points for the corresponding emergency rule.

Resolution I.3. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Administrative Code Scope Statements for Wisconsin Administrative Code, Chs. UWS 4 (“Procedures for Dismissal”); UWS 7 (“Dismissal of Faculty in Special Case”); UWS 11 (“Dismissal of Academic Staff for Cause”); and UWS 17 (“Student Nonacademic Disciplinary Procedures”).

SUMMARY

Title IX of the Education Amendments of 1972 requires that all educational institutions that receive federal funds of financial assistance prohibit sex discrimination in their education programs and activities (34 C.F.R. Part 106). Over the past eighteen months, the U.S. Department of Education (ED) has engaged in rulemaking to further examine and clarify schools’ responsibilities in responding appropriately to reports of sex discrimination, sexual harassment, sexual violence, intimate partner violence, and stalking involving faculty, staff, and students as well as pregnant and parenting students. On May 5, 2020, the Department released a final rule with which all recipient educational institutions are required to comply by August 14, 2020.

As part of complying with the new Title IX regulations, the University of Wisconsin System Administration is seeking rule changes to Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code so that the chapters comply with the substantive and procedural requirements provided under the regulations. As part of the rulemaking process, the Board of Regents must approve the scope statements as per Wis. Stat. 227.135. UW System Administration held a preliminary public hearing regarding the scope statements on July 16, 2020. UW System Administration is required to report on the public comment period

and public hearing as required by Wis. Stat. 227.136. UW System Administration did not receive any written or verbal public comments during the public comment period or public hearing.

UW System Administration has developed a plan for drafting the emergency rules which are required to take effect by August 14, 2020 and requests the Board's input.

New Title IX Regulations

Scope of conduct covered by Title IX

Definition

Jurisdiction

New Title IX Process

Notice, Investigations, Hearings and Appeals

Additional Due Process Requirements

UW System Efforts to Comply

Revisions to Employee Codes

Revisions to Student Codes

System efforts to support campus compliance

Presenter(s)

- Quinn Williams, UW System General Counsel
- Katie Ignatowski, UW System Director of Compliance and Integrity
- Sarah Harebo, UW System Title IX and Clery Administrator

BACKGROUND

The University of Wisconsin System (UW System) seeks to modify the University of Wisconsin Board of Regents (Board) administrative rules, Ch. UWS 4, 7, 11, and 17. All UW System institutions would be affected by the proposed rule revisions articulated in the related scope statement.

The Board has statutory authority for Chapters UWS 4, 7, 11, and 17 under Wis. Stat. 36.09(1) of the Wisconsin Statutes, 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."

Previous Action or Discussion

UWS Chapters 4, 7, 11, and 17

The Board last discussed this topic at its July 9, 2020 meeting when it approved a notice of a preliminary public hearing on the scope statements for the revision of Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code. Prior to that, the Board of Regents amended UWS Chapters 4, 7, 11, and 17 of the Wisconsin Administrative Code in April 2015 through Resolutions 10476, 10477, and 10478, all of which addressed the Dear Colleague Letter updates from the U.S. Department of Education.

Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"

In December 1980, the Board of Regents adopted Resolution 2297, which created Regent Policy Document (RPD) 80-8, outlining a process for institutions to report incidents of sexual harassment, as well as establishing the Regent Task Force on the Status of Women. In April and May 1981, the Board of Regents adopted Resolutions 2361 and 2384, which respectively adopted many of the task force recommendations and replaced RPD 80-8 with RPD 81-2. Resolution 3758, adopted in April 1987, updated RPD 81-2, which was subsequently renumbered as RPD 14-2. The Board of Regents updated RPD 14-2 through the adoption of Resolution 10786 in December 2016.

UW System Task Force on Sexual Violence and Harassment

In July 2014, the Present of the UW System ordered the Task Force on Sexual Violence and Harassment to lead and coordinate systemwide efforts to strengthen UW System's capacity to prevent sexual violence and harassment. This Task Force reported to the Board of Regents in December 2016 to provide a variety of findings and recommendations on how to reform Board of Regents and UW System policies.

UW System Policy

In June 2018, the Board of Regents adopted Resolution 11038, which called for the UW System to create policies to provide personnel records for former or current UW System employees, document allegations and investigations of employee sexual harassment, and form appropriate reference check procedures for prospective UW System employees. This resulted in the revision of UW System Administrative Policy 1261 and UW System Administrative Policy 1275 in January 2019.

Related Policies

- [Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"](#)
- [Chapter UWS 4, Wis. Admin. Code: "Procedures for Dismissal"](#)
- [Chapter UWS 7, Wis. Admin. Code: "Dismissal of Faculty in Special Cases"](#)

- [Chapter UWS 11, Wis. Admin. Code: "Dismissal of Academic Staff for Cause"](#)
- [Chapter UWS 17, Wis. Admin. Code: "Student Nonacademic Disciplinary Procedures"](#)
- [UW System Administrative Policy 1261, "Personnel Files"](#)
- [UW System Administrative Policy 1275, "Recruitment Policies"](#)

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 4

Relating to: Procedures for Dismissal of Faculty

Rule Type: Both Permanent and Emergency

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

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including faculty. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

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

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 4, regarding Procedures for Dismissal of Faculty, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 4 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

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:

The current version of Chapter UWS 4 provides a disciplinary process for pursuing dismissal of faculty for just cause. This process has been fair and effective since it was first published in 1975. The Chapter previously has been amended through the administrative rule-making process to update the Chapter on several occasions.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 4 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 4 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

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

Wis. Stat. § 36.09(1)(a): “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, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.”

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

40 hours.

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

All University of Wisconsin System institutions and the faculty 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:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including faculty. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of faculty sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual

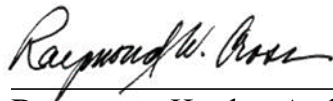
misconduct and effectively implements remedies for victims. Chapter UWS 4 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

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

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Sarah Harebo, Title IX and Clery Administrator, 608-262-5739



Department Head or Authorized Signature

June 18, 2020

Date Submitted

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 7

Relating to: Procedures for Dismissal of Faculty in Special Cases

Rule Type: Both Permanent and Emergency

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

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including faculty. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

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

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 7, regarding Procedures for Dismissal of Faculty in Special Cases, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 7 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

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:

The current version of Chapter UWS 7 provides a disciplinary process for pursuing dismissal of faculty for just cause in special cases. This process has been fair and effective since it was first published in 2007. The Chapter previously has been amended through the administrative rule-making process to update the Chapter.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 7 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 7 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

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

Wis. Stat. § 36.09(1)(a): “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, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.”

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

40 hours.

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

All University of Wisconsin System institutions and the faculty 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:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including faculty. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of faculty sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual

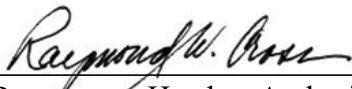
misconduct and effectively implements remedies for victims. Chapter UWS 7 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

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

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Sarah Harebo, Title IX and Clery Administrator, 608-262-5739



Department Head or Authorized Signature

June 18, 2020

Date Submitted

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 11

Relating to: Procedures for Dismissal of Academic Staff for Cause

Rule Type: Both Permanent and Emergency

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

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including academic staff. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

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

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 11, regarding Procedures for Dismissal of Academic Staff for Cause, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 11 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

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:

The current version of Chapter UWS 11 provides a disciplinary process for pursuing dismissal of academic staff for just cause, including cases of serious criminal misconduct, such as sexual assault. This process has been fair and effective since it was first published in 1975. The Chapter previously has been amended through the administrative rule-making process to update the Chapter.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 11 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 11 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

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

Wis. Stat. § 36.15(3): “A person having an academic staff appointment for a term may be dismissed prior to the end of the appointment term only for just cause and only after due notice and hearing. A person having an academic staff appointment for an indefinite term who has attained permanent status may be dismissed only for just cause and only after due notice and hearing. In such matters the action and decision of the board, or the appropriate official authorized by the board, shall be final, subject to judicial review under ch. [227](#). The board shall develop procedures for notice and hearing which shall be promulgated as rules under ch. [227](#).”

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

60 hours.

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

All University of Wisconsin System institutions and the faculty 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:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including academic staff. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of academic

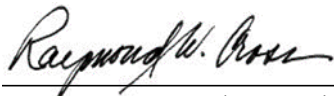
sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual misconduct and effectively implements remedies for victims. Chapter UWS 11 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

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

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

Contact Person: Sarah Harebo, Title IX and Clery Administrator, 608-262-5739



Department Head or Authorized Signature

June 18, 2020

Date Submitted

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 17

Relating to: Nonacademic Student Misconduct

Rule Type: Both Permanent and Emergency

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

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university students. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's students and to avoid jeopardizing access to federal funding, which is critical to supporting the University's students.

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

The Board of Regents of the University of Wisconsin System seeks to modify Chapter UWS 17, regarding Student Nonacademic Misconduct, to comply with new Title IX regulations the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving students. Specifically, the Board seeks to amend Chapter UWS 17 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations and to ensure institutions are able to continue to properly respond to allegations of sexual misconduct in light of these required changes. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

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:

The current version of Chapter UWS 17 provides a student disciplinary process for handling student misconduct allegations, including allegations of sexual misconduct. This process has been fair and effective since it was first published in 1996. In 2009 and 2015, the Chapter was updated and amended through the administrative rule-making process. The Chapter authorizes each institution of the University of Wisconsin System to adopt consistent policies and procedures, and UW institutions have adopted such policies and procedures.

The modifications contemplated by this rulemaking would incorporate into law changes necessary to conform Chapter UWS 17 to the new federal Title IX regulations. Institutions would adopt policies consistent with the revised Chapter.

The new federal regulations are contained in 34 CFR Part 106. 34 CFR Part 106.30 requires use of certain definitions, including Title IX-specific definitions for sexual harassment, stalking, sexual assault, and other Title IX-covered violations. However, the federal regulations also permit UW institutions to continue to address sexual violence and harassment that fall outside of Title IX's scope and related definitions, allowing institutions to continue to address a broader scope of conduct under their own policies. Thus, the University of Wisconsin System will consider modifying or adding definitions of sexual misconduct to Chapter UWS 17.09 to ensure institutions are able to appropriately address all sexual misconduct allegations, including those outside the scope of Title IX.

Requirements in the federal regulations (34 CFR Part 106.45) relate to the grievance process for formal complaints, including investigations, informal resolution options, live hearings, and appeals. Among other things, these requirements include:

- providing, upon request, an advisor to complainants and respondents to conduct cross-examination
- providing specific notice of allegations to respondents
- application of a relevance standard by the hearing body

These revisions will likely result in revisions to Chapter UWS 17.12. The basis for appeal in 34 CFR 106.45(b)(8) likely will require revisions to Chapter UWS 17.13.

An alternative to modifying Chapter 17 would be to continue to operate with both the current Chapter UWS 17 and the new federal Title IX regulations. However, this would seem to be in conflict with the language in the federal rules (see 34 CFR 106.45(h)) preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation, as well as complicated and confusing procedures for students.

More specifically, failure to comply with Title IX may result in cutoff of federal funds to a higher education institution. Additionally, a higher education institution that fails to have Title IX policies and procedures that are compliant with the regulations and available to complainants and respondents likely will be considered to have been deliberately indifferent to its Title IX obligations and therefore exposed to liability through private-party lawsuits filed by respondent and complainant students.

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

Wisconsin Statutes, Section 36.35 states, "The board shall promulgate rules under ch.227 governing student conduct and the procedures for the administration of violations." These rules will govern student conduct related to sexual harassment and sexual violence and set forth the procedures for addressing violations.

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

100 hours.

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

All University of Wisconsin System 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:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of student sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

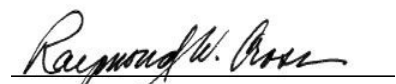
The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against students. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. As stated in the regulations, universities are obligated to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual misconduct and effectively implements remedies for victims. Chapter UWS 17 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance, including but not limited to changes to investigative procedures, hearing procedures, and appeals.

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

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

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



Department Head or Authorized Signature

June 18, 2020

Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

June 19, 2020

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to procedures for dismissal of faculty (Wis. Admin. Code ch. UWS 4); and
- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to procedures for dismissal of faculty in special cases (Wis. Admin. Code ch. UWS 7); and
- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to procedures for dismissal of academic staff for cause (Wis. Admin. Code ch. UWS 11); and
- Both an emergency and permanent statement of scope by The Board of Regents of the University of Wisconsin System, submitted June 18, 2020, relating to nonacademic student misconduct (Wis. Admin. Code ch. UWS 17).

Please direct any questions about this letter to my policy director, Jenni Dye.

Sincerely,

A handwritten signature in black ink that reads 'Tony Evers'.

Tony Evers
Governor

Cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Jenni Dye, policy director (jenni.dye@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
Quinn Williams, UWS (qwilliams@uwsa.edu)