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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 20-008

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 2. Form, Style and Placement in Administrative Code

a. In the caption for the proposed rule, the enumeration of treated provisions should appear as follows: “proposes an order to amend UWS 18.11 (1) (a), (b), (e), and (f) and (3) (d); and to create UWS 18.11 (1) (h) and (3) (g)”. [s. 1.02 (1) (Example), Manual.]

b. In the board’s analysis for the proposed rule, in order to conform to current conventions for the order of entries, the board could consider moving the “statutes interpreted” heading to appear first in the board’s analysis. Also, the entry of “no information” under that heading should be removed, and any citations for statutes that are interpreted by the rule should be listed. For example, it appears that the rule identifies the standards and measures that the board finds necessary to fulfill the objectives in s. 36.11 (1) (a) and (c), Stats., to protect the lives, health, and safety of persons on System property, and to provide for orderly operation and care and preservation of the System and its activities. Accordingly, as the board is interpreting the general objectives in those provisions, these and any other applicable citations for statutes that are interpreted by the rule should be listed.

c. The board’s analysis for the proposed rule should be revised to include a “statutory authority” heading, with an entry to list the statutes that provide rulemaking authority for the proposed rule. Under current drafting conventions, this is a separate heading from the explanation of agency authority, appearing before that explanation, to simply list the identified statutes. [s. 1.02 (2) (a) 1. and 2., Manual.]

d. In the board's analysis for the proposed rule, the description of the factual data and analytical methodologies used in preparing the rule should be revised to provide an overview of the board's process in developing the proposed rule and the entry of "no information" under that heading should be removed. For example, the entry should state if a review and comparison was made among the current text of the rule, the statutory directives on the issue, and guidance from U.S. Supreme Court decisions. Any other aspects of the analytical process used in developing the proposed rule should also be briefly identified.

e. In the board's analysis for the proposed rule, the board could consider revising the format of the citations for the statutes and administrative rules. For example, the proper format for citations to the statutes would appear as "s. 36.11 (1) (a), Stats.," and the proper format for citations to the administrative code would appear as "s. UWS 18.11 (1) and (3)".

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In the board's plain language analysis for the proposed rule, the board should consider citing the specific U.S. Supreme Court cases that it relies upon for its proposed rule modifications.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the board's explanation of agency authority for the proposed rule, specifically in the quotation from s. 36.11 (1) (c), Stats., the board should revise the phrase "or all or" to "or all of".

b. In s. UWS 18.11 (1) (a) and (b), the board describes what constitutes harassment twice, but there is a difference in the language between pars. (a) and (b). Specifically, in par. (a), the board states that behavior is harassment if "it can be said to deprive the recipient", while in par. (b), the board states that behavior is harassment if "it could deprive the recipient". The board should consider making the language identical.

c. In s. UWS 18.11 (1) (a) and (b) and (3) (d), assuming that the board is relying upon *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), for its description of harassment, the board should consider adding the phrase "access to" before "educational or employment opportunities or benefits" in each of the three places that the language is being inserted. This would more closely align with the language of the case.