

Report From Agency

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REPORT TO LEGISLATURE

UWS 11, Wis. Admin. Code

Procedures for dismissal of academic staff for cause

Clearinghouse Rule No. 20-061

Basis and Purpose of the Proposed Rule

The basis for the proposed rule is ss. 36.09 (1)(a), Stats.

The Board of Regents of the University of Wisconsin System (UW System) proposes revising Chapter UWS 11 to comply with Federal Title IX regulations dictating how universities respond to allegations of sexual misconduct against students, faculty, and staff. The last substantial revision of Chapter UWS 11 took place in 2016 to comply with earlier federal guidance related to Title IX.

To comply with the new federal regulations, this rule revision updates the disciplinary procedures against academic staff within the UW System. The new regulations update the definitions of sexual misconduct and procedures used to address allegations of sexual misconduct. Whereas the current UWS definitions use Wisconsin state law definitions, the federal regulations require definitions from the Clery Act, the Violence Against Women Act, and federal case law. The new regulations also require universities to provide notice to both the complainant and the respondent when a Title IX complaint is filed, as well as at several key steps in the process. The federal regulations dictate under what circumstances a university must and may dismiss Title IX complaints. Finally, the regulations require live hearings to reach a determination regarding Title IX allegations. In these hearings, both respondent and complainant have a right to representation from an advisor, and if either party is unable to find an advisor, the university must provide that party with an advisor at no cost. The parties must also have the opportunity to present and review evidence. It is also required that their advisors conduct cross-examination during the hearing, as the parties are not permitted to cross-examine each other.

Summary of Public Comments

UW System received one comment related to the rule. The commenter asked for further clarification surrounding the circumstances in which a complaint could be resolved by formal and informal methods. Based on that comment, UW System revised its rule draft to add more clarity as to when formal and informal resolution methods could be applicable.

Appearances at the Public Hearing

Virtual Hearing, November 30, 2020 – UW System Representatives – Tomas Stafford and Sarah Harebo

Changes to Rule Analysis and Fiscal Estimate

The rule was modified appropriately in response to the public comment. There is no change to the original fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on November 24, 2020.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse by either making the change as suggested, making the change with a revision, or deleting the language in question, except for those discussed below.

- LCRC: The effects of renumbering of ss. UWS 11.101 to 11.106 should be reviewed. For example, will the reference to s. UWS 11.105 in s. UWS 11.08 remain accurate after the renumbering? The proposed rule appears to maintain numerous cross references to provisions rendered obsolete by the renumbering.

UW System Response: The renumbering of chapters was necessary to divide the chapter into subchapters for ease of readability. The drafting team checked the references to these sections and updated them throughout the chapter accordingly.

- LCRC: In SECTION 16, under the definition of “Formal Title IX Complaint”, in proposed s. UWS 11.13 (3), it states “A formal Title IX complaint may be filed in person, by mail, by electronic mail, or any other method designated by the university.”. It appears that 34 CFR § 106.8 (a) specifically requires that an institution must be able to receive complaints by “telephone number” as well.

UW System Response: The UW System disagrees with this comment and the notion that a university must receive a complaint via telephone. 34 CFR § 106.8 (a) refers to the designation of a Title IX Coordinator. A formal complaint is defined in 34 CFR § 106.30:

“Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education

program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).”