

STATE OF WISCONSIN

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

ORDER OF THE BOARD OF REGENTS AMENDING RULES IN CHAPTER UWS 18, WISCONSIN ADMINISTRATIVE CODE, CONDUCT ON UNIVERSITY LANDS (SS 013-19)

ORDER

The Board of Regents of the University of Wisconsin System proposes to order the amendment of UWS 18.11 (1) (a), (b), (e) and (f) and 18.11 (3) (d); and the creation of 18.11 (1) (h) and 18.11 (3) (g), relating to conduct on University lands.

ANALYSIS

Analysis by the Board of Regents of the University of Wisconsin System.

Explanation of Agency Statutory Rulemaking Authority: The Board of Regents of the University of Wisconsin System's authority to promulgate the proposed rule is found in Wisconsin Statutes, Section 36.11(1)(a), 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 to prevent obstruction of the functions of the system." Authority also is found in Wisconsin Statutes, Section 36.11(1)(c), which 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 the system in any or all of its authorized activities and in any or all of its institutions." Finally, authority is found in Wisconsin Statutes, Section 36.09(1), which 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."

Plain Language Analysis: The proposed rule amends Chapter UWS 18.11(1) and Chapter UWS 18.11(3) to: (a) remove the words "annoy" and "offend"; (b) add language containing the legal standard for hostile environment harassment set forth by the U.S. Supreme Court; (c) expand protection from electronic or telephonic harassment beyond those communications that involve obscene, lewd or profane language, or language suggesting any lewd or lascivious act, as currently stated in the code; and (d) add language prohibiting threatening or intimidating electronic or telephonic communications that meets the legal standard for a "true threat" as set forth by the U.S. Supreme Court.

The Board of Regents recognizes its duty to protect members of the University community from electronic or telephonic harassment while also respecting individual free speech rights. After reviewing the issue, the Board has determined that the proposed amendments to UWS 18.11(1)

and UWS 18.11(3) are necessary to address concerns that current code language may impinge on free speech rights and also to expand protections against electronic or telephonic harassment beyond those currently contained in the code.

Comparison with existing or proposed federal statutes or regulations: No information.

Comparison with rules in adjacent states: Public universities in Illinois, Michigan, Iowa and Minnesota do not have comparable administrative rules.

Statutes interpreted: No information.

Related statutes or rules: Wisconsin Statutes, Section 947.012; Section 947.0125; and Section 947.013.

Summary of factual data and analytical methodologies: No information.

Analysis and supporting documents used to determine fiscal and economic impact and impact on small businesses in preparation of Fiscal Estimate and Economic Impact

Analysis: The “Public Notice: Request for Public Comments on the Economic Impact of Proposed Rules” for UWS 18 was published in the State Register and made available on the Board of Regents’ website at: <https://www.wisconsin.edu/regents/public-comment-form-chapter-uws-18-wis-admin-code/>. The notice remained open for 14 days from January 13, 2020, through January 27, 2020. No comments on the economic impact of the proposed rule were received.

Fiscal Estimate, Economic Impact Analysis, and Effect on Small Business: The proposed rules do not have any economic or fiscal impact on specific businesses, on business sectors (including small businesses), or on the State of Wisconsin’s economy as a whole. The Fiscal Estimate and Economic Impact Analysis is attached.

Public Comments: The Board of Regents will accept written comments until March 12, 2020. Comments may be submitted: (1) on the web at <https://www.wisconsin.edu/regents/public-comment-form-chapter-uws-18-wis-admin-code> or at adminrules.wisconsin.gov; (2) by email to board@uwsa.edu; (3) at the public hearing scheduled from 11:00 a.m. to 12:00 p.m. on March 5, 2020 in the Sonata Room, Gordon Dining and Event Center, 770 W. Dayton Street, Madison, Wisconsin; or (4) by mail to Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

Agency contact person: Tomas L. Stafford, Senior System Legal Counsel; 608-265-5319; tstafford@uwsa.edu.

TEXT OF PROPOSED RULE

SECTION 1. UWS 18.11 (1) (a), (b), (e) and (f) are amended to read:

UWS 18.11 (1) (a) No person may, ~~with intent to harass, annoy or offend~~ another person, ~~send~~ by sending a message to the person on an electronic mail or other computerized communication

system ~~and in that~~, including a message use that uses any obscene, lewd, or profane language or suggest suggests any lewd or lascivious act. For the purposes of this paragraph, a message is harassing if it is discriminatory, targeted, and so severe, pervasive, and objectively offensive that it can be said to deprive the recipient of educational or employment opportunities or benefits.

(b) No person may, ~~with intent to harass, annoy or offend~~ another person, ~~send~~ by sending a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message ~~and in that~~, including a message use that uses any obscene, lewd or profane language or suggest suggests any lewd or lascivious act. For the purposes of this paragraph, a message is harassing if it is discriminatory, targeted, and so severe, pervasive, and objectively offensive that it could deprive the recipient of educational or employment opportunities or benefits.

(e) No person may, with intent to harass ~~or annoy~~ another person, send a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) No person may, while intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to harass ~~or annoy~~ another person, send a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

SECTION 2. UWS 18.11 (1) (h) is created to read:

UWS 18.11 (1) (h) No person may send a message to a person on an electronic mail or other computerized communication system that uses threatening or intimidating language. For the purposes of this paragraph, a message is threatening if the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular person or group of persons, and a message is intimidating if the speaker directs a threat to a person or group of persons with the intent of placing that person or group of persons in fear of bodily harm or death.

SECTION 3. UWS 18.11 (3) (d) is amended to read:

UWS 18.11 (3) (d) No person, ~~with the intent~~ may use a telephone to harass ~~or offend, may telephone another and use~~ another person, including using any obscene, lewd, or profane language or ~~suggest~~ suggesting any lewd or lascivious act. For the purposes of this paragraph, harassment occurs if the language used is discriminatory, targeted, and so severe, pervasive, and objectively offensive that it can be said to deprive the recipient of educational or employment opportunities or benefits.

SECTION 4. UWS 18.11 (3) (g) is created to read:

UWS 18.11 (3) (g) No person may use a telephone to threaten or intimidate another person. For the purposes of this paragraph, a threat occurs if the speaker means to communicate a serious

expression of an intent to commit an act of unlawful violence to a particular person or group of persons, and intimidation occurs if the speaker directs a threat to a person or group of persons with the intent of placing that person or group of persons in fear of bodily harm or death.

SECTION 5. EFFECTIVE DATE: The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)