



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 20-059

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 rule analysis, the agency should identify the adjacent states’ code provisions that address this subject matter, and identify or link to documentation of the states’ updates.
- b. Should the relationship between ss. UWS 4.01 (3) and 4.02 (1) be clarified? Proposed s. UWS 4.01 (3) states that certain provisions of ch. UWS 4 do not apply to dismissal for Title IX misconduct, while the applicability of the same provisions is less clear as referenced in the existing text of s. UWS 4.02 (1).
- c. The order of provisions treated by SECTIONS 4, 5, and 6 should be reviewed. For example, amendment of s. UWS 4.015 (5) and (6) should appear before the repeal and recreation of s. UWS 4.015 (9) and (10), and s. UWS 4.015 (6m) should be treated after s. UWS 4.015 (6).
- d. Is the citation to “20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a)” in proposed s. UWS 4.015 (9) (intro.) accurate? Should the comma between the sources be replaced with “and” or “or”? Alternatively, since the defined terms in proposed s. UWS 4.015 (9) (intro.) appear specifically in 34 CFR 668.46 (a), is the citation to the U.S. Code necessary? Additionally, is the use of the phrase “an offense that meets any of the following definitions found in [federal law]” accurate relative to the definition of these terms in pars. (a) to (d)? In particular, the reference to definitions found in federal law is confusing with respect to citation to Wisconsin Statutes in pars. (c) and (d).
- e. In proposed s. UWS 4.015 (9) (d) and (10) (intro.), the words “rape” and “exploitation” need not be capitalized.

- f. Avoid the use of the phrase “and/or” in proposed s. UWS 4.015 (6m).
- g. Paragraph titles in proposed s. UWS 4.016 (2) should be written with an initial capital letter, italicized, and followed by a period.
- h. The all-caps text at the beginning of SECTION 15 of the proposed rule does not match the text of the treatment clause for that SECTION.
- i. Proposed s. UWS 4.11 (6) states, ““Title IX misconduct” means sexual harassment, sexual assault, stalking, dating violence, or domestic violence as defined in this section.”. Of those terms, only “sexual harassment” is defined in proposed s. UWS 4.11. Similarly, is the reference solely to “sexual harassment” in proposed s. UWS 4.14 (1) (a) accurate?
- j. In proposed s. UWS 4.15 (4) (a), avoid the use of parentheses.
- k. The effective date provision of the proposed rule should conform to s. 1.02 (4), Manual.

3. Conflict With or Duplication of Existing Rules

Generally, Clearinghouse Rules 20-059, 20-060, 20-061, and 20-062, and chs. UWS 4, 7, 11, and 17 should be reviewed for consistency with one another. For example, agency treatments to address the use of the phrase “his/her” and standards for dismissal of a Title IX complaint vary across the related clearinghouse rules.

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

- a. In SECTION 4, proposed s. UWS 4.015 (9) (d), the definition of “Statutory Rape” references s. 944.06, Stats., which is the statutory citation regarding incest. It appears the intended citation is to s. 948.02, Stats., regarding the sexual assault of a child.
- b. In SECTION 13, the purpose of the note following proposed s. UWS 4.08 (1) would be clearer to the reader if it included the title of the cited subchapter “Open Meetings of Governmental Bodies”. In addition, there are other instances in the proposed rule where subch. V of ch. 19, Stats., is cited and described by the common name for the subchapter “the Open Meeting Law” or “Open Meetings Law”. In these circumstances, it seems more appropriate to refer to the subchapter by its actual title as noted above “Open Meetings of Governmental Bodies”. Additionally, what inference does the agency intend for the reader to draw from these notes?
- c. In s. UWS 4.20 (1) (intro.), “s.” should be placed before “UWS 4.19”.

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

- a. The term “incapacitation” is defined in SECTION 4 and is used elsewhere in the proposed rule, however, the term “incapacitated” is used in the definition of “consent”. Replacing the term “incapacitated” with “in a state of incapacitation” would be more consistent with the proposed definition of “incapacitation”.
- b. Proposed s. UWS 4.20 (1) (c) should end with a period.
- c. In SECTION 15, proposed s. UWS 4.20 (1) (i) 1. includes the phrase “The need” prior to the remainder of the provision where the other provisions do not. This is grammatically incorrect. One solution may be to include “The need” prior to each of the alternatives, however, it

may be simpler to insert “the need for” in proposed s. UWS 4.20 (1) (i) (intro.), between “includes” and “any”, thereby accomplishing a similar result.

d. In SECTION 15, under proposed s. UWS 4.23 (2) (c), the “conflict of interest or bias” on the part of the chancellor or hearing staff is the basis for exception and the sentence should be restructured similarly to pars. (a) and (b) in order to remain parallel with those paragraphs.