

Report From Agency

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REPORT TO LEGISLATURE

UWS 4, Wis. Admin. Code

Procedures for dismissal of faculty

Clearinghouse Rule No. 20-059

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 4 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 4 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 faculty 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 at the time 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 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: 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).

UW System Response: The Title IX Coordinator would be involved in cases of sexual misconduct even if those case do not fit within the specific definition of Title IX sexual misconduct in the rule. Therefore, the language should remain as stated.