

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 11

Relating to: Procedures for Dismissal of Academic Staff for Cause

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

On May 6, 2020, the Federal Government released new, comprehensive Title IX regulations addressing sexual harassment and sexual violence with respect to university employees, including academic staff. The regulations go into effect on August 14, 2020. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 14, 2020, to ensure the safety and welfare of the University's employees.

2. Detailed description of the objective of the proposed rule:

The Board of Regents of the University of Wisconsin System ("Board") seeks to modify Chapter UWS 11, regarding Procedures for Dismissal of Academic Staff for Cause, to comply with new Title IX regulations that the U.S. Department of Education has published relating to the manner in which higher education institutions address and respond to sexual harassment and sexual violence misconduct allegations involving employees. Specifically, the Board seeks to amend Chapter UWS 11 to modify and add certain sections to ensure the process under which such allegations would be addressed by University of Wisconsin System institutions is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a permanent rule.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The current version of Chapter UWS 11 provides a disciplinary process for pursuing dismissal of academic staff for just cause, including cases of serious criminal misconduct, such as sexual assault. This process has been fair and effective since it was first published in 1975. The Chapter previously has been amended through the administrative rule-making process to update the Chapter.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 11 to the new federal Title IX regulations. Institutions could adopt policies consistent with the revised Chapter.

An alternative would be to continue to operate with both the current Chapter UWS 11 and the new federal Title IX regulations. This, however, would seem to be in conflict with the language in the federal rules preempting conflicting state laws and regulations. It could lead to confusion and exposure to federal enforcement action and third-party litigation.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 36.15(3): “A person having an academic staff appointment for a term may be dismissed prior to the end of the appointment term only for just cause and only after due notice and hearing. A person having an academic staff appointment for an indefinite term who has attained permanent status may be dismissed only for just cause and only after due notice and hearing. In such matters the action and decision of the board, or the appropriate official authorized by the board, shall be final, subject to judicial review under ch. 227. The board shall develop procedures for notice and hearing which shall be promulgated as rules under ch. 227.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

60 hours.

6. List with description of all entities that may be affected by the proposed rule:

All University of Wisconsin System institutions and the faculty thereof.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Title IX of the Education Amendments of 1972 provides that “[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Currently, there are no federal regulations interpreting this law with respect to addressing allegations of employee sexual misconduct. However, the U.S. Department of Education has issued new federal regulations effective August 14, 2020, with respect to how institutions of higher education that receive federal funding must address allegations of sexual misconduct. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new federal Title IX regulations found at 34 CFR Part 106 mandate substantive and procedural requirements for a university’s investigation and adjudication of formal complaints of sexual harassment or sexual violence against employees, including academic staff. The new regulations are intended to effectuate Title IX’s prohibition against sex discrimination. The regulations obligate universities to respond promptly and supportively to persons alleged to have been victimized by sexual harassment or sexual violence, to resolve allegations of academic

sexual misconduct promptly and accurately through a predictable and fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual misconduct and effectively implements remedies for victims. Chapter UWS 11 currently complies with many of the new federal requirements. However, certain amendments need to be made to the Chapter to bring it into full compliance.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There may be an economic impact on UW institutions, given the University is required by the regulations to provide additional resources to support employees, students, advisors, hearing officers, and additional trainings. The University will continue to offer mental health services and other support and resources to all victims of sexual harassment and assault, regardless of whether they choose to file a formal Title IX complaint.

The University will continue to evaluate any potential economic impacts as it begins drafting rule language and will include more detailed analysis in its EIA. There is no anticipated significant economic impact on small businesses.

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Department Head or Authorized Signature

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