

# STATEMENT OF SCOPE

## The Board of Regents of the University of Wisconsin System

**Rule No.:** Chapter UWS 1

**Relating to:** Definitions of Terms Used In Chs. UWS 1 To 6

**Rule Type:** Emergency and Permanent

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

On April 19, 2024, 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 1, 2024. An emergency rule is required for the University of Wisconsin System to be compliant with these new federal regulations by August 1, 2024.

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

Through a separate scope statements the Board seeks to amend Chs. UWS 4, 7, 11, and 17, 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 define and respond to sex discrimination and sex-based harassment allegations involving students, employees, and visitors.

This will involve issuing related emergency rules followed by the promulgation of permanent rules.

The Board seeks to consolidate the regulatory definitions related to Title IX from Chs. UWS 4, 7, 11, and 17 in Chapter 1 to apply to all of those chapters for ease of reading and use.

### **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 modifications contemplated by this rulemaking would incorporate into law necessary changes to conform the definitions in Chs. UWS 4, 7, 11, and 17 to the new federal Title IX regulations.

An alternative would be to continue to operate with both the current definitions in Chs. UWS 4, 7, 11, and 17 and the new federal Title IX regulations. This, however, would conflict with the federal rules preemption of conflicting state laws and regulations. It will 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. § 36.09(1)(a): “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, plan for the future needs of the state for university education, ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers and promote the widest degree of institutional autonomy within the controlling limits of system-wide policies and priorities established by the board.”

Wis. Stat. § 36.11(1)(a): “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. Any person who violates any rule promulgated under this paragraph may be fined not more than \$500 or imprisoned not more than 90 days or both.”

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.”

Wis. Stat. § 36.35(1): “The board may delegate the power to suspend or expel students for misconduct or other cause prescribed by the board. Subject to sub. (4), the board shall promulgate rules under ch. 227 governing student conduct and the procedures for the administration of violations.”

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

400 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, academic staff, and students 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.” The U.S. Department of Education has issued new federal regulations effective August 1, 2024, with respect to how institutions of higher education that receive federal funding must define and address sex discrimination and sex-based harassment. The U.S. Department of Education through its Office for Civil Rights enforces these regulations.

The new regulations are intended to continue to effectuate Title IX’s prohibition against sex discrimination and sex-based harassment, including continuing to ensure fairness and due process for all parties in the university’s investigation and adjudication of such complaints. The new regulations have expanded the universe of covered parties and activities, while also providing some flexibilities to institutions in responding to and adjudicating complaints of sex discrimination and sex-based harassment.

**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 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

5/13/2024

Date Submitted