

STATEMENT OF SCOPE

The Board of Regents of the University of Wisconsin System

Rule No.: Chapter UWS 4

Relating to: Procedures for Dismissal of Faculty

Rule Type: Emergency and Permanent

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

On April 19, 2024, the Federal Government released new Title IX regulations addressing sex discrimination and sex-based harassment with respect to university students, visitors, and employees, including faculty. 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:

The Board of Regents of the University of Wisconsin System (“Board”) seeks to modify Chapter UWS 4, regarding Procedures for Dismissal of Faculty for Dismissal and Discipline in Title IX Cases, to comply with new Title IX regulations that the U.S. Department of Education has published relating to allegations of sex discrimination and sex-based harassment involving employees. These 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. Specifically, the Board seeks to amend Chapter UWS 4 to modify and add certain sections to ensure it is compliant with the new federal Title IX regulations. This will involve issuing an emergency rule followed by the promulgation of a related 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 4 provides a disciplinary process for pursuing dismissal of faculty or dismissal or discipline of faculty in Title IX cases. 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 on several occasions.

The modifications contemplated by this rulemaking would incorporate into law necessary changes to conform Chapter UWS 4 to the new federal Title IX regulations.

An alternative would be to continue to operate with both the current Chapter UWS 4 and the new federal Title IX regulations. This, however, is in conflict with the federal rules which preempt 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. § 36.09(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.”

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 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 federal regulations effective August 1, 2024, with respect to how institutions of higher education that receive federal funding must address allegations of 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 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