



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Scott Grosz**  
*Clearinghouse Director*

**Anne Sappenfield**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

### CLEARINGHOUSE RULE 20-061

#### 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 s. UWS 11.015 be titled “Definitions” instead of “Definition”?
- c. The order of provisions treated by SECTIONS 3 and 4 should be reviewed. Section UWS 11.015 (6m) should be treated after s. UWS 11.015 (6).
- d. Is the citation to “20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a)” in proposed s. UWS 11.015 (9) (intro.) accurate? Should the comma between the sources be replaced with “and” or “or”? Alternatively, since the defined terms in proposed s. UWS 11.015 (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 the citation to Wisconsin Statutes in pars. (c) and (d).
- e. In SECTION 6, proposed s. UWS 11.016 (2) (a) and (b) appear to require some sort of introductory material. [See s. 1.03 (3), Manual.]
- f. The all-caps text at the beginning of SECTION 16 of the proposed rule does not match the text of the treatment clause for that SECTION.

g. Proposed s. UWS 11.13 (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 11.13. Similarly, is the reference solely to “sexual harassment” in proposed s. UWS 11.16 (1) (a) accurate?

h. Proposed s. UWS 11.27 is created with an introductory clause and one subsection. Were other definitions omitted? Division of a rule provision with a single subsection should be avoided. Could the definition created by s. UWS 11.27 (1) be included elsewhere in the chapter, perhaps in s. UWS 11.015?

i. In SECTION 21, proposed s. UWS 11.31 (3) appears to require some sort of introductory material. [See s. 1.03 (3), Manual.] Also, is s. UWS 11.31 (1) (intro.) amended? If so, changes should be indicated with strikes and underscores. If not, the treatment should be limited to s. UWS 11.31 (1) (a) and (b). Sections UWS 11.31 (3) (a) and 11.32 (a) to (c) also do not appear to be treated by the proposed rule.

j. Generally, the amendment of provisions renumbered by SECTION 13 of the proposed rule should follow the format prescribed by s. 1.04 (2) (a) 2., Manual.

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**

a. 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 between the related clearinghouse rules.

b. The effects of renumbering of ss. UWS 11.101 to 11.106 should be reviewed. For example, will the reference to s. UWS 11.105 in s. UWS 11.08 remain accurate after the renumbering? The proposed rule appears to maintain numerous cross references to provisions rendered obsolete by the renumbering.

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

a. In SECTIONS 14 and 15, “s.” or “ss.” Should precede the cross-references inserted in each provision.

b. In proposed s. UWS 11.15 (5), is the reference to s. UWS 4.12 accurate? That provision, as created by CHR 20-059, does not appear to define a “written formal Title IX complaint”.

c. In SECTION 17, the purpose of the note following proposed s. UWS 11.22 (1) (e) 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?

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

a. The term “incapacitation” is defined in SECTION 3 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 11.016 (2) (a) 2. should end with a period.

c. Should the word “standard” be followed by a comma in proposed s. UWS 11.016 (2) (b) 1. and 2.?

d. Section 1.01 (3) of the Manual recommends the elimination of all terminology that is not sex-neutral. In the proposed draft, this is done by mixing the singular with the plural cases as is done in SECTION 8, s. UWS 11.05 (1) (b), with the plural pronoun “their”. The Manual does not recommend the elimination of language that is sex-neutral through the use of plural pronouns. Rather, it recommends replacing a non-sex-neutral pronoun with the noun to which it refers. In this case it should be replaced with “the staff member’s”. This change should be made in all such instances throughout the proposed rule.

e. In SECTION 17, under proposed s. UWS 11.25 (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.

## **6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

In SECTION 16, under the definition of “Formal Title IX Complaint”, in proposed s. UWS 11.13 (3), it states “A formal Title IX complaint may be filed in person, by mail, by electronic mail, or any other method designated by the university.”. It appears that 34 CFR § 106.8 (a) specifically requires that an institution must be able to receive complaints by “telephone number” as well.