

**Year 2 Public Description of Work for
Action Collaborative on Preventing Sexual Harassment in Higher Education**

University of Wisconsin System

**Wisconsin Administrative Code Rulemaking
and Regent Policy Revision**

Relevant Rubric Area(s):

Improved Policies, Addressing Gender Harassment and Other Harmful Behaviors, and Identifying and Reinforcing Community Values

Description of Work:

On May 19, 2020, the U.S. Department of Education (ED) released final regulations effective August 14, 2020, establishing educational institutions' responsibilities in responding to reports of sexual harassment, sexual assault, dating violence, domestic violence, and stalking involving faculty, staff, and students. In response to the new requirements, the UW System had to review and revise their current policies and associated sections of the Wisconsin Administrative Code. The UW System Office of Compliance and Integrity led this effort. While the driving force for undertaking rulemaking and policy revision was compliance with the new Title IX regulations, the UW System also used this as an opportunity to improve our policies and take additional measures to address harassment and other harmful behaviors.

The first step in this project was to form a Title IX Regulation Implementation Team comprised of stakeholders from across the UW System. This team included UW System administrators from compliance and general counsel as well as campus representatives such as compliance officers, student conduct officers, Title IX Coordinators, and student affairs officers.

Initial review of the current UW System codes and the new federal Title IX regulations began with discussion regarding potential changes that may assist with addressing harassment and other harmful behaviors on campus. We decided to create a definition of sexual exploitation, as a form of sexual misconduct, to clarify and explicitly define additional harmful behaviors, in order to position us to address a broader scope of behavior on our campuses. In order to draft this definition, we conducted policy research as well as solicited feedback from system practice councils, such as the UW System Title IX Coordinator Council, UW System Prevention Coordinator Council, and Student Conduct Officers Group. Prior to formally codifying this definition, such conduct was required to be addressed under other provisions of the conduct code. The inclusion of this new category and definition of sexual exploitation resulted in meaningful discussions and inquiries from System leaders, state legislators, and regents. It is worth noting that this addition was not required by the new Title IX regulations.

Under the UW System codes and related Regent Policy Document 14-2, sexual exploitation is defined as "attempting, taking or threatening to take nonconsensual sexual advantage of another person." The definition includes the following examples:

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(a) Engaging in any of the following conduct without the knowledge and consent of all participants:

1. Observing, recording, or photographing private body parts or sexual activity of one or more complainants.
2. Allowing another person to observe, record, or photograph sexual activity or private body parts of one or more complainants.
3. Otherwise distributing recordings, photographs, or other images of the same of one or more complainants.

(b) Masturbating, touching one's genitals, or exposing one's genitals in complainant's presence without the consent of complainant, or inducing another person to do the same.

(c) Dishonesty or deception regarding the use of contraceptives or condoms during the course of sexual activity.

(d) Inducing incapacitation through deception for the purpose of making another person vulnerable to non-consensual sexual activity.

(e) Coercing the complainant to engage in sexual activity for money or anything of value.

(f) Threatening distribution of any of the following, to coerce the complainant into sexual activity or providing money or anything of value:

1. Photos, videos, or recordings depicting private body parts or sexual activity of one or more persons.
2. Other information of a sexual nature, including sexual history or sexual orientation.

It is worth noting that the working group took this drafting opportunity to also remove gendered language from these chapters of the Wisconsin Administrative Code as well as Regent Policy Document 14-2 and move toward inclusive language.

Uniquely, Wisconsin's student conduct code as well as faculty and academic staff codes of conduct are embedded in the Wisconsin Administrative Code. In order to make changes to the code, UW System is required to go through formal rulemaking. By August 2020, the UW System, with the work of the team and working group, implemented emergency rules to modify Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code as well as an interim version of Regent Policy Document 14-2 to comply with the new federal regulations. On December 10, 2020, the Board of Regents approved the permanent rules for submission to the Governor's Office. Upon the governor's signature, the permanent rules were sent to the legislature for review and approval. The permanent rules became effective June 1, 2021. After the permanent rules were approved by the legislature, the working group revised the interim version of Regent Policy Document 14-2 to reflect the changes in the permanent rules. The Audit Committee of the Board of Regents approved the policy changes on June 3, 2021.

This work is directly related to the rubric and the 2018 NASEM report in that it allowed us to make the necessary changes to make sure that our policies provide, clear, accessible, and consistent procedure, language, and timelines for handling allegations and complaints involving faculty, staff, and students. Our policy and codes clearly state that they apply to on campus and off campus allegations of misconduct. In addition, the new versions of the policy and related sections of Wisconsin Administrative Code took steps to address gender harassment and other harmful behaviors as well as reinforced community values with the inclusion of sexual exploitation as a newly recognized and defined form of sexual misconduct. Moreover, the

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removal of gendered language and use of inclusive language reflective of UW System's efforts to support inclusive practices.

The impact of this work will be difficult to measure. It will be interesting to see how many allegations of sexual exploitation are investigated over the next year. The next step in this work is to obtain feedback as the changes are implemented and continue to review policies for improvement.

Website for further information (if applicable): <https://www.wisconsin.edu/compliance/landing-page/title-ix/>

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