

**RECORD OF THE SPECIAL MEETING OF THE
UNIVERSITY OF WISCONSIN SYSTEM BOARD OF REGENTS**

Wednesday, August 5, 2020
12:30 p.m.

By WebEx Videoconference
1860 Van Hise Hall
1220 Linden Drive
Madison, Wisconsin

-Vice President Grebe presiding-

CALLING OF THE ROLL..... 2
DECLARATION OF CONFLICTS..... 2
APPROVAL OF ADMINISTRATIVE CODE EMERGENCY RULES FOR CHAPTERS UWS 4, 7, 11 & 17 3
Approval of Administrative Code Emergency Rule Drafts for Chapters UWS 4, 7, 11 and 17..... 7
**APPROVAL OF INTERIM CHANGES TO REGENT POLICY DOCUMENT 14-2, "SEXUAL VIOLENCE
AND SEXUAL HARASSMENT" 7**
*Approval of Interim Changes to Regent Policy Document 14-2, "Sexual Violence and Sexual
Harassment"..... 8*

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The recording of this meeting's open session is available at: [August 5, 2020 Webcast](#)

CALLING OF THE ROLL

PRESENT: Regents Robert Atwell, Scott Beightol, Amy Bogost, Héctor Colón, José Delgado, Michael Grebe, Eve Hall, Mike Jones, Tracey Klein, Becky Lezvow, Edmund Manydeeds, Cris Peterson, Corey Saffold, Karen Walsh, Kyle Weatherly, and Olivia Woodmansee.

UNABLE TO ATTEND: Regents Andrew Petersen and Carolyn Stanford Taylor.

DECLARATION OF CONFLICTS

[\[00:02:43\]](#)

Before considering any items on the open session agenda, Vice President Grebe asked if any Board members wished to declare any conflicts of interest as per Regent Policy Document 2-4, "Ethics and Conflict of Interest Policy for the UW System Board of Regents." No conflicts were declared.

APPROVAL OF ADMINISTRATIVE CODE EMERGENCY RULES FOR CHAPTERS UWS 4, 7, 11 & 17

[\[00:02:58\]](#)

Vice President Grebe stated that the UW System Board of Regents is required to adopt rule changes to Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code in order to comply with the new federal Title IX regulations, as well as related changes to Regent Policy Document (RPD) 14-2, "Sexual Violence and Sexual Harassment". He explained the consequences for failing to comply with the new regulations include the potential loss of the UW System's federal funding, which approaches \$1 billion annually, as well as creating uncertainty and likely litigation in connection with any hearings that are not conducted in a manner consistent with the new federal rules.

Vice President Grebe provided a brief overview of the rulemaking process to date:

- On July 20, 2020, the Board approved the scope statements for Chapters UWS 4, 7, 11, and 17 of the Wisconsin Administrative Code, permitting the UW System's legal and compliance teams to draft the proposed emergency rule language.
- On July 27, 2020, preliminary versions of the proposed emergency rule language were shared with the Board of Regents, the public, and interested parties throughout the UW System.
- On August 4, 2020, updated versions of the proposed emergency rule language were provided to the Board of Regents and UW System stakeholders.

Vice President Grebe said the next step in this process is for the Board to take action on the proposed emergency rule language in order to comply with the August 14, 2020 timeline imposed by federal law. The Board will review and consider permanent rule changes in late 2020 or early 2021.

Interim System President Thompson stated that each campus is heavily engaged in making every effort to prevent sexual harassment from occurring in the first place, by educating campus communities and by providing a space where everyone can learn, work, and feel safe. He affirmed that the UW System will continue its commitment to provide an environment free of harassment, discrimination and violence, and will also continue to aggressively enforce violations of law and policy.

President Thompson recognized General Counsel Quinn Williams, Director of Compliance & Integrity Katie Ignatowski, and Title IX Coordinator Sarah Harebo for their work on the administrative rules and policy changes.

Director Ignatowski briefly summarized the process used to draft and distribute the rule and policy changes for review and comment by UW stakeholders and the public. If approved by the Board, she said the emergency rules would next be submitted to the Governor's Office for final consideration and approval. After gubernatorial approval is received, the emergency rules will be published in the Wisconsin State Journal and become effective on August 14, 2020, for a period of 150 days. She indicated that the Board may request up to two 60-day extensions of the emergency rules if approved by the Legislature.

Director Ignatowski said that once the emergency rules take effect, UW staff will continue work on drafting permanent rule language to be circulated for comment in October or November 2020. The permanent rules are expected to be presented to the Board in late 2020 or early 2021, along with permanent changes to RPD 14-2.

Director Ignatowski outlined some of the notable provisions in the federal Title IX regulations, including requirements for universities to investigate complaints of Title IX sexual misconduct, provide supportive measures to complainants, utilize the same standard of evidence for student and faculty Title IX cases, provide written notice to all parties throughout the process, conduct a live hearing with cross-examination, and provide advisors to all parties at the hearing.

Director Ignatowski said that the university must use Title IX procedures in student and faculty cases that meet the definition of Title IX sexual misconduct, but the university has discretion to use its own process in cases involving sexual misconduct that falls outside the Title IX definition or jurisdiction. She also provided an overview of the complaint, investigation, hearing, and appeal processes for Title IX and non-Title IX cases.

Director Ignatowski noted that the university plans to retain its current process for employee non-Title IX cases in the emergency rules and interim RPD 14-2, allowing for shared governance input and a thorough review of the potential impacts of any changes.

Director Ignatowski requested that the Board consider changes to create a more uniform grievance process across the UW System's comprehensive institutions with centralized investigations and a shared Title IX case management database. She explained that standard protocols and a central pool of trained investigators would create more consistency and minimize potential risks or conflicts of interest. A central database of Title IX cases would allow for better access to data and metrics and would address concerns identified in the 2019 internal audit of Title IX cases regarding documentation, timelines, and communication with involved parties.

Regent Beightol made a motion to adopt Resolution 11474. The motion was seconded by Regent Delgado. Vice President Grebe opened the floor to discussion.

Responding to a question from Vice President Grebe, Director Ignatowski stated that institutions across the country are moving to comply with the new Title IX changes by the August 14th deadline. Regarding centralization, she added that other institutions are also exploring ways to increase the sharing of resources as the burden of compliance reporting has grown and resources have become more constrained.

Vice President Grebe asked about the potential impact of pending litigation seeking an injunction against the implementation of the new federal Title IX rules. General Counsel Williams said if an injunction is granted before August 14th, the UW System can halt publication to prevent its emergency rules from going into effect. If an injunction is granted on or after August 14th, he said the Board of Regents would need to meet again to suspend the emergency rules.

Regent Colón said it would be advantageous to have a uniform, consistent set of standards, training, and support for campuses related to the grievance process.

Regent Walsh said she also supported centralization, citing concerns about the financial constraints experienced by the comprehensive campuses and the impact of inconsistent policies across the UW System. She also spoke in favor of providing some latitude for the two Research I institutions, UW-Madison and UW-Milwaukee, which already have resources in this area.

Regent Bogost expressed support for a centralized systemwide compliance process. She credited UW staff with doing a great job reviewing the new Title IX changes, but also noted her concerns about the dual processes for Title IX and non-Title IX cases and potential liability resulting from that system. She requested that the Board have ample time moving forward to discuss and ask questions about any permanent changes.

Regent Jones stated that although he did not personally agree with all of new federal Title IX changes, he believed the UW System must remain in compliance with the laws of the land.

Regent Manydeeds said he was in favor of centralization across the UW System given the differences in resources and staff experience among the campuses. Noting the advantages of having investigators who are familiar with the rules of evidence, he suggested recruiting from retired judges for a shared pool of investigators.

Regent Klein agreed that some campuses lack the resources necessary to maintain a consistent standard of investigations. She thanked the legal team for their work in analyzing the details of the Title IX changes and observed that this is not ideal time for the UW System to have to implement the new regulations. Regent Klein noted that she continued to have concerns about the content of the changes, but concluded that she

would support the emergency rules bringing the UW System into compliance by the August 14th deadline in order to avoid the potential loss of federal funding.

Regent Klein also urged that the Board spend time at a future meeting to further discuss what education and training should be offered to staff on the new rules, and more broadly how to keep campus environments free from sexual harassment.

Regent Hall said she would also support a central system for complaints, noting that standard policies would make the process fairer for all parties. She supported the Board having opportunities to discuss these matters further at future meetings.

Regent Delgado requested additional information about the additional costs involved in providing representation to each party as required in the new regulations, noting that some campus budgets are tighter than others. He also said the Board should hear from chancellors about the proposed centralization of the grievance process before any decisions are made.

Responding to a question from Regent Bogost, Director Ignatowski said the university is required to provide notice at the beginning of the grievance process about whether a case falls under Title IX or non-Title IX procedures. She indicated that the university must be careful with its communications to avoid potential confusion among the involved parties.

Regent Walsh stated that it is regrettable that the UW is expected to comply with changes to such a serious and complex matter during a pandemic. She recognized the excellent work staff have been doing under pressure but said the federal government should not have rushed universities to make these decisions when plans for the fall semester should be the priority.

Vice President Grebe invited chancellors to offer input about the suggested centralization of the grievance process.

UW-Stevens Point Chancellor Patterson shared that he previously served as a trained investigator, and as a chancellor he has noticed a marked difference in reports prepared by trained and untrained investigators. He expressed support for centralization.

UW-Oshkosh Chancellor Leavitt said he is in favor of centralizing the investigatory process and legal advisement services, but also requested that chancellors remain in control of the decision making with System staff providing support.

UW-Madison Vice Chancellor for Legal Affairs Ray Taffora urged Board members to consider differences in which processes undergo centralization for UW-Madison, UW-Milwaukee, and the comprehensives.

Regent Manydeeds said it is vital to have consistency in these matters throughout the state.

Vice President Grebe remarked that there is a clear consensus among Board members on the issue of centralization. Although he noted that the UW System may not seek formal action by the Board on this matter, Vice President Grebe asked staff to report back in the fall on any plans for centralization.

With no further discussion, Resolution 11474 was approved on a voice vote.

Approval of Administrative Code Emergency Rule Drafts for Chapters UWS 4, 7, 11 and 17

Resolution 11474 That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Administrative Code Emergency Rule Drafts for Wisconsin Administrative Code, Chs. UWS 4 ("Procedures for Dismissal and for Dismissal and Discipline in Title IX Cases"); UWS 7 ("Dismissal of Faculty in Special Cases"); UWS 11 ("Dismissal of Academic Staff for Cause and for Discipline and Dismissal in Title IX Cases"); and UWS 17 ("Student Nonacademic Disciplinary Procedures").

Vice President Grebe thanked everyone for a thoughtful discussion on an important matter that will impact many constituencies in the UW system.

APPROVAL OF INTERIM CHANGES TO REGENT POLICY DOCUMENT 14-2, "SEXUAL VIOLENCE AND SEXUAL HARASSMENT"

[\[01:00:50\]](#)

Director Ignatowski also presented an overview of proposed changes to RPD 14-2 which include updates to Title IX definitions, requirements, and procedures. She noted that these policy changes are being made on an interim basis only, with permanent changes to be considered along with permanent rules for Chapters UWS 4, 7, 11 and 17. The final policy is expected to be presented in late 2020 or early 2021.

Director Ignatowski also noted that these interim changes are still being circulated for comment by UW stakeholders. If additional changes are necessary in response to any comments received, she said an updated interim policy will be presented at the Board's August 20th meeting.

Regent Walsh made a motion to adopt Resolution 11475. The motion was seconded by Regent Jones and adopted on a voice vote.

Approval of Interim Changes to Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment"

Resolution 11475 That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves the Interim Regent Policy Document 14-2, "Sexual Violence and Sexual Harassment".

Vice President Grebe thanked Director Ignatowski and her team for their hard work under a stressful timeline.

The meeting was adjourned at 1:36 p.m.

Submitted by:

/s/ Jess Lathrop

Jess Lathrop
Executive Director & Corporate Secretary
Office of the Board of Regents
University of Wisconsin System