

EDUCATIONAL APPROVAL BOARD

Meeting of December 11, 2001

30 W. Mifflin St., 8th Floor
Madison, WI 53703

Members Present: Richard Berg, Raymond Boland, Leroy Conner, Jr., Georgiana Giese, Jon Litscher, Delora Newton, Gene Kussart

Absent: None

Others Present: David Dies, Joan Fitzgerald, Linda Heidtman, Patrick Sweeney, Blanca James, EAB; David Larsen, John Rosinski, WDVA; Andi Rainey, Inacom; Chris Eckels, TechSkills

Ray Boland, Chair of the Educational Approval Board, called the meeting to order at 1:10 p.m. and noted that all members of the Board were present with the exception of Mr. Kussart. Mr. Boland mentioned that a revised agenda had been sent to all Board members, which now calls for a closed session. A motion (Newton, Conner) for approval of the minutes of June 20, 2001 was made. The motion was approved unanimously.

Closed Session

Mr. Boland asked to take up the agenda item calling for a closed session for the purpose of the discussion of the appointment and compensation of the Executive Secretary. Mr. Rosinski indicated that reference to the statutory authority for the closed session was in order. Mr. Boland cited s.19.85(1)(c), *Wisconsin Statutes*, to consider the appointment of an Executive Secretary in accordance with s.45.54(5), *Wisconsin Statutes*. A motion (Berg, Conner) to enter into closed session was made and approved 6-0. Mr. Rosinski advised that consistent to a closed session motion, the Board could designate those persons, if anyone, to remain. Mr. Boland requested Mr. Rosinski and Mr. Larsen to remain. Mr. Boland also requested all other persons leave for the closed session.

Open Session

The open session reconvened, and Mr. Boland said that during closed session, the Board endorsed the appointment of David Dies as Executive Secretary of the Educational Approval Board. Mr. Boland officially welcomed Mr. Dies and indicated how pleased he was at having him as Executive Secretary; and stated that the skills that Mr. Dies brings to the position make him extremely qualified to meet the challenges that the EAB faces today and will face in the future. His experience in the area of education, particularly with postsecondary education, state government, and the budget are going to serve him well in this position.

BOARD CHAIR'S REPORT

Mr. Boland reported that since the last meeting, the Educational Approval Board has physically relocated to 30 W. Mifflin Street. The move is now completed and the EAB is almost resettled. He

is pleased to have the EAB in the building where his staff, which has administrative responsibility, can provide the support the EAB needs to accomplish its mission. He also noted the budget provisions removed the State Approving Agency (SAA) functions from the Educational Approval Board functions. Consideration was given over a couple of budgets to move the SAA function, which is a GI Bill oversight function for those veterans who are attending school in Wisconsin and schools who are receiving GI Bill payments. The decision was made to move the SAA function to the Department of Veterans Affairs, where in many other states the function is managed and put along side other education and employment-related functions for which the DVA is also responsible.

Mr. Boland indicated that DVA Legal Counsel was present today and that this is one of the support functions that the DVA provides out of their administrative support role assigned to the department for the Board. There was a time in the past when the Board had its own Legal Counsel. That staffing support was lost along the way and it has been difficult without having counsel immediately available for the Board to get opinions and interpretation on a number of issues that have come up. Mr. Boland said that Mr. Rosinski, the Chief Legal Counsel for the Department of Veterans Affairs, along with James Stewart, are going to provide that support and service to the Board on a daily basis.

Mr. Boland continued by saying the EAB's role has been an on-going issue, and the question of its importance is no less today than it was before. In fact, it plays an increasingly important role as the complexity of postsecondary education issues continues to grow, particularly as it relates to distance learning. This situation has been made even more challenging with the recent events of the state of the economy, increased unemployment rates, more people seeking training and re-training education, reconfiguring for the workforce, etc. All of those things suggest an added importance to all of the courses and programs offered by both for-profit and non-profit institutions over which the EAB has approving responsibility. He indicated that our task is not getting any smaller, it continues to get larger, and the Board must continue to keep an eye on the future and what other directions the future might be taking. Mr. Boland indicated that the state is looking at other initiatives to deal with postsecondary education management. He suspects those interests will continue although for the present we are in a status quo situation as far as the EAB and its current function. There are no other changes on the table that will affect the way it operates in the near term.

(Mr. Kussart arrived.)

Mr. Boland went on to say that the recruitment process to bring on a new Executive Secretary was an extremely important task for the Board in recent months; and were very pleased with the quality of the applicants, in particular the person they were able to select.

EXECUTIVE SECRETARY'S REPORT

Mr. Dies thanked Mr. Boland and directed everyone to the Executive Secretary's Report. He proceeded to summarize a few of the issues that the EAB has been dealing with administratively and otherwise.

Staffing Issues

Mr. Dies indicated that there is currently one vacant program assistant position. Blanca James has been performing the duties of this position as a Limited Term Employee. Mr. Dies has been very appreciative of the assistance she has provided and went on to say that he intends to begin the process

of filling the position after the first of the year. Given that the EAB is a program rather than a funded agency, the current hiring freeze and some of the current budget restrictions affecting the Department of Administration because of the State's fiscal crisis, are not directly affecting the EAB.

In other areas of staffing, one of the things Mr. Dies initially did was to conduct individual interviews with staff to gain an understanding of the EAB's history and to try to identify some of the issues it will need to deal with in the coming months. Mr. Dies said that he intends to have a staff retreat in January to begin working on a strategic plan that will help guide the EAB in the years to come. He went on to say that there are a number of issues involving Distance Education, Workforce Investment providers, and computer training that need to be addressed. Mr. Dies also mentioned the split between EAB and SAA functions and that a number of administrative issues remain to be resolved, but EAB has had very good cooperation from DVA staff.

Budget

Mr. Dies reported that the EAB's budget is in very good shape with underspending reported in all respective lines. The most significant underspending is in the salary and fringe lines due mainly to the vacancies of the Executive Secretary and Program Assistant positions. Mr. Dies also indicated that the EAB has a carryover for the current fiscal year of about \$254,000. This carryover is available, but the EAB would need to get additional expenditure authority to spend it. He said that further discussion about the carryover would take place during the agenda item in which the fee multiplier was discussed. Mr. Dies feels that the carryover is significant enough to warrant a look at how the EAB uses these dollars.

One of the issues Mr. Dies will be working on is an Administrative Services Agreement with the DVA. The EAB has had agreements with the various agencies in which it has been housed over the years. Currently, however, there is no agreement in place. This was done in order to give the new Executive Secretary an opportunity to negotiate the new agreement.

EAB Awareness

One particular issue that the EAB needs to address is awareness of the EAB's role in regulating private postsecondary education in Wisconsin. Staff has begun to issue press releases as a way to inform others about how the EAB is involved in the regulation of the schools and that these schools exist.

Another effort to raise the awareness of the EAB's existence is through distribution of the Annual School Directory. The directory contains information on the various EAB-approved schools. For the first time, this year's directory will be provided to high school guidance offices as a way to inform guidance counselors and students of the postsecondary educational opportunities that exist in addition to the University of Wisconsin, the technical colleges, and some of the state's private colleges.

EAB visibility in different types of settings is also important. Mr. Dies attended the Economic Summit sponsored by the UW and had the opportunity to visit with a number of state agency officials and education players.

EAB Conference

The EAB hosts an approved school conference that typically has been held in the fall. Last year's conference was postponed because of the absence of an Executive Secretary. A new date has been selected. It will be Thursday, April 11, 2002, and the Board will be getting invitations.

Legislative Issues

Mr. Dies mentioned a couple of legislative issues that the EAB is monitoring. Legislation to create an education tax credit would affect a number of EAB-approved schools. Because of the state's economic situation, the chance of this bill passing is not good, although there is a fair amount of support for the legislation. This bill would create a tax credit up to 50% of the tuition that is paid on behalf of the individuals. EAB schools that offer a four-year degree are included in the definition of a "Qualified postsecondary institution" under the bill. Other legislation would make Wisconsin students attending an out-of-state college or university that has a campus in this state eligible for the state's financial aid programs.

Mr. Litscher asked if a position had been taken on AB396. Mr. Dies answered that the Board has not taken a position, but simply wanted to bring it to the Board's attention. To his knowledge no one has registered on behalf or against the bill.

Mr. Litscher stated that he thought the last paragraph of the bill was critical and that the current financial aid program is designated to support state students and state-supported universities, such as Lawrence, Beloit, Ripon, and St. Norberts. By expanding the eligible population, the current grant program would be dramatically reduced. This bill would be the first step in the slippery slope of providing financial aid to any student regardless of whether it is a four-year university or other private profit or non-profit school. Mr. Litscher felt that it would be a dangerous precedent, and that he would be interested in engaging in a discussion on this at a later time. Mr. Dies will take the issues, lay them out, and bring them back to the Board.

Mr. Kussart raised the question of fiscal notes for these bills. Mr. Kussart feels that it would be helpful to have those in addition to the actual language. Mr. Kussart made the suggestion that, in the future, when the Board gets proposed legislation, it would also be beneficial for the Board to get a fiscal note.

Mr. Dies added that the EAB is not currently identified with the State Budget office as an agency that would prepare fiscal notes. These two pieces of legislation are examples where the EAB is not affected, but the schools the EAB approves are, and that may be some rationale for us to prepare fiscal notes. Mr. Dies will speak with the Department of Administration as to how the EAB can make this happen and what would be appropriate. Mr. Dies feels there is a way in which we could receive legislation for our input in terms of fiscal notes.

Ethics Board Updates

Mr. Dies said that all of the necessary paperwork in reporting requirements that are prescribed in statutes for state agencies who have contact with legislators has been updated. Mr. Dies also visited with a few of the legislators and staff who are in charge of the respective education committees to let them know that he is now on board and that the EAB exists.

BUDGET SUMMARY

Mr. Dies pointed out that this agenda item is simply an information item that summarizes what happened in the budget, and it did not require any action. Since the Board did not meet after the budget was passed by the Legislature and partially vetoed by the Governor, Mr. Dies thought this information was appropriate.

Mr. Boland commented on a discussion he had with Mr. Dies and used cosmetology schools, which happen to be on the list provided, as an example. Mr. Boland had one discussion with the secretary of Regulation and Licensing who, like others, was not aware of the function of the EAB and areas of similarities. He would like Mr. Dies to get together with the secretary to review the areas that overlap and develop a mutual understanding of each agency's jurisdiction.

Mr. Berg had a question about the Education Commission proposal. He said that a study was included in the budget that was passed by the Legislature and that the Governor vetoed it. In the veto message, the Governor indicated that legislators already had the authority to request such a study. Mr. Berg asked if anything was going on regarding a request for such a study. Mr. Boland responded that he was not aware of anything else happening. He said that there is continued interest by at least some members of the Legislature in this kind of study, but that there has been no action taken.

Mr. Dies added that he perceived support for the proposal from staff who worked for former Governor Thompson. However, with the change in administration, the level of support was not the same. Mr. Dies said that he had been in contact with one legislator who has expressed interest in pursuing the issue. Mr. Berg asked Mr. Boland if he was still involved in active discussion on this issue. Mr. Boland responded that he was, and stated that somewhere in the budget process he was contacted about another forum that had been created, specifically the PK-16 council, which includes representation of most of the education community in our state. The Governor's office felt that the chairman of this Board should become a member of that body. Mr. Boland has attended one meeting and is trying to discern the direction this group may be heading. Mr. Boland spoke with Katharine Lyall a couple of times about the mission of that body vs. his vision for another kind of body, trying to explain to her where the EAB has been coming from with our thoughts and concerns.

FY 02 & FY 03 FEE MULTIPLIER

Mr. Boland introduced the next item in the agenda -- the setting of the 2002-03 fee multiplier, which requires Board action. Mr. Dies was asked to summarize the issue. He began by saying that one of the things required by law is to establish a fee multiplier that is equal to the percentage of all schools' total adjusted gross annual revenues. Essentially, the multiplier must be set so that revenues cover the costs of EAB's operations. Mr. Dies described the revenues, which are made up of two different categories: one-time fixed fees and renewal fees. The fixed fee is used when a school applies for initial approval, when they revise a program, change a teaching location, and a number of other school changes. The renewal fee is where the multiplier is involved. There are two components to that renewal fee. One is done in July when the EAB sends out a letter advising the school that it is coming up on next year's renewal, and that they need to make a payment of \$500 by September 1. There are some exceptions to the amount of this fixed fee such as inactive schools. The schools are also required to submit to the EAB a host of information, financial statements, evidence of a bond,

etc. The information provided is looked at and used to set the second payment. Using the multiplier and the information provided by the schools, second payment invoices are prepared, and those payments are due March 1. The school gets a cover letter along with an invoice and their renewal certificate for the next calendar year in December. Mr. Dies pointed out that the second payment is when the majority of EAB's money is received. The current multiplier is 4.8711.

The staff is proposing that the multiplier be held at that current level. The Administrative Code requires the EAB to set a multiplier for two-year increments to level out cyclical effects. The reason staff is recommending the multiplier be held at its current level is to avoid reducing the multiplier next year and then increasing it significantly in future years. Mr. Dies provided the Board with two pieces of information: a spreadsheet that lays out how the multiplier is calculated and a trend analysis that, in part, shows the one time revenues the EAB received over the past five/six years. The trends and analysis sheet also shows one-time, fixed fees, and what the EAB calls the AGASR (Adjusted Gross Annual School Revenues). Mr. Dies went on to discuss the actual multiplier calculation.

Mr. Kussart asked if the EAB is required to carry a certain balance. Mr. Dies responded that the EAB is not required to maintain a carryover, but added that the EAB has some money in a separate fee account of about \$50,000 (out of the \$254,000) intended to cover unanticipated fluctuations. Mr. Dies went on to say the EAB staff will be looking at creating a formal reserve in the future. The EAB has had a number of school closings in the last six to eight months and there are a number of students who have not received any refund. Mr. Dies suggested a protection fund to address those kinds of situations may be a good way to use the carryover.

Mr. Litscher made two comments. Regarding the multiplier -- the larger the adjusted growth school revenue and the multiplier, the more money we take in. The EAB estimated the AGASR at 3% growth over the next three years yet, historically, it has never been that low -- a conservative low. Regarding fixed fees -- the fixed fee was estimated down. Fixed fees have not been that low since fiscal year 97.

Mr. Dies explained that typically the Board has approached setting the fees in a conservative manner, and there is no mechanism in place to generate any additional fees. Mr. Litscher commented that the purpose of the EAB is to try to do the work with the lowest impact on the schools and that we need to take a more realistic approach. He also felt that to continue to increase the carryover would be a bad thing.

Mr. Litscher made the motion to keep the multiplier as recommended and that the multiplier is 4.8711 for this year. However, he would like to add an attachment to this motion with the consideration of the Board that the Executive Secretary enters into a dialogue with the schools to find out jointly what kind of multiplier they think is more appropriate in the future. Mr. Boland asked if the attachment information had to be in the motion or be approved with the understanding that Mr. Dies would develop the information as requested. Mr. Litscher answered that the latter would be fine.

Mr. Kussart acknowledged the need to establish the fee and asked whether the fee had to be established for two years or could the fee be adjusted after one year. Mr. Dies consulted with Mr. Rosinski and quoted the statute that explained the fee multiplier—under EAB 4.10(2)(d)2—the EAB shall levy a second renewal fee based on licensed schools' adjusted gross annual revenues and set the fee multiplier for two-year periods at a time. Mr. Kussart went to add that he shared Mr. Litscher's

concern. He would like to see the multiplier set for one year, have the EAB staff do some work on it, and come back to make a final decision. Mr. Rosinski suggested setting the multiplier for two years, but to revisit it before the second year. Mr. Boland referred to a discussion he and Mr. Dies had on this particular matter, and that given the amount of time Mr. Dies had to look at this issue, that staying with the same rate until Mr. Dies could gather more information and do more analysis seemed to be the logical thing. Mr. Boland acknowledged Mr. Litscher's motion to approve and Mr. Berg seconded. There was a unanimous vote to set the rate for fiscal years 02/03 at 4.8711.

BOARD MEMBER PARTICIPATION VIA VIDEO CONFERENCE OR TELECONFERENCE

Mr. Dies stated that the EAB was looking at ways in which it can facilitate Board participation at the Board meetings. After consulting with legal counsel, he was advised that there is no discussion in Administrative Code about video or tele conferencing. Because the code is silent, Roberts Rules of Order would prevail. However, Roberts Rule of Order does not speak to video or tele conferencing either. Therefore, the EAB is in somewhat of a gray area. Mr. Dies feels that in the long run the EAB would like to change the rules but that it would take some time. At this point the EAB is asking the Board to adopt a resolution that would allow Board members to participate via video or tele conferencing, and then amend the rules as we can.

Ms. Newton stated that she did not disagree with this request but that she wanted clarification on whether this was a formal enough process to modify an Administrative rule or was this a temporary action until the Board could go through a rule revision. Mr. Rosinski explained that establishing Board procedure in rule is unusual. However, in this situation, he felt the Board was not amending the rule but merely interpreting the rule in a way that would allow Board members who cannot physically attend the meeting be able to do so by telephone. Mr. Rosinski went on to add that this resolution would allow the Board to comply with what is needed to be done if a Board member or Board members wanted to participate by telephone. Mr. Rosinski suggested that the Board may want to repeal the code in its entirety in the future, and simply adopt the rules and procedures that allows you to be more flexible. He pointed out that the rules do not say the Board cannot hold meetings in this manner, and that the resolution is appropriate. Ms. Giese said that she was supportive of this resolution, but wanted to know whether or not we had the capability to videoconference here. Mr. Boland answered that we do not have this capability, but that we are working on it and hope to have in the near future.

A motion to approve the resolution (Kussart, Litscher) was made and approved unanimously. Mr. Boland said that until the Board looks at all these issues in the next meeting if someone cannot be present, they can participate by telephone.

EAB ACTIVITY REPORT

Mr. Dies presented the EAB Activity Report and indicated that the first three pages and last page were probably the most important. The first three basically summarize what the EAB staff has been doing over the last six months, June 20 through December 4. The last page, he continued, is a spreadsheet used to track the schools that may have some kind of problem or violation. The schools may not be fulfilling EAB's requirements, reported a substantial loss, or perhaps missing financial statements. The EAB staff will continue to work with these schools to resolve their issues. Mr. Dies indicated that the reason why the EAB is requesting an action is because of the way the statutes and

Administrative Code are constructed. Although the Board has delegated school approval functions to staff, formal Board approval would be in order. Mr. Boland commented that at one time the Board had to sit and review (as a Board) every page of curriculum for every institution that sought approval, and recommended that the Board members should at least have the opportunity to pass formal approval on these actions. A motion for adoption of the report was made by Mr. Litscher and seconded by Ms. Newton. The vote was unanimous.

BOARD ISSUES AND CHALLENGES

Mr. Boland introduced the next section and indicated that questions, comments, and answers had already been given on these issues.

(Mr. Litscher departed.)

BOARD MEETING SCHEDULE

Mr. Dies provided the Board Members with tentative Board meeting dates, expressed the need for at least quarterly meetings—March, June, September, and December. Mr. Dies identified two dates per meeting allowing for some flexibility. Mr. Boland agreed with Mr. Dies and that based on his experience, four meetings in the year would be appropriate. Mr. Dies would coordinate with the Board members via e-mail to come up with meeting dates. Mr. Boland suggested that teleconferencing Board meetings could be made before the actual quarterly Board meetings, and that this may be something we may want to consider.

Mr. Boland asked if there are any questions, and Mr. Kussart had one pertaining to the conversation on the two bills that are in legislature. Mr. Kussart pointed out that if the Board is going to take a position on legislation, meeting on a quarterly basis was not going to be timely. He suggested the Board take a look at its role in advocating for or opposing legislation. He wanted to know how we (the Board) would handle this issue. Mr. Rosinski said that additional meetings and teleconferencing would be appropriate. However, there might be difficulty in convening relatively quickly. Mr. Kussart inquired as to how involved the Board wanted to be with legislature and pointed out that the Board had not taken that stance before. Mr. Boland agreed. Mr. Dies said that he would look at some of the issues and find out exactly how this has been in the past. Mr. Boland suggested that it be reviewed in a future meeting.

There being no questions or Other Business, Mr. Boland asked for a motion to adjourn. Ms. Newton motioned and Mr. Kussart seconded. The meeting ended at 2:47 p.m.