

EDUCATIONAL APPROVAL BOARD

Administrative Rule Public Hearing
Meeting of Tuesday, February 10, 2004
1:30 p.m.

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

Members Present: Christy Brown, Michael Cooney, Terry Craney, Georgiana Giese, Richard Raemisch, Monica Williams

Members Absent: Raymond G. Boland

Others Present: David Dies, Blanca James, Educational Approval Board; John Rosinski, James Stewart, WDVA; James Chitwood, University of Phoenix; Brian Elliott, Michael Rogowski, Whyte Hirschboeck, Dudek SC (representing the University of Phoenix); Hattie L. Hinde, New Horizons Computer Learning Center

The EAB vice-chairperson Georgiana Giese called the meeting to order at 1:30 p.m. The roll was called and a quorum was present. Ms. Giese stated that the only order of business was to conduct a public hearing on Clearinghouse Rule 03-126, creating a student protection fund. The hearing was opened and anyone interested in testifying or registering in support or in opposition of the rule was instructed to complete a hearing slip.

As required by law, the EAB executive secretary David Dies summarized the proposed rule and explained the need. He stated that the student protection fund was proposed so students would be better-protected in school closure situations. In the past, school bonds have been insufficient. To highlight the need for the student protection fund, Mr. Dies read a February 19, 1985 letter sent to then EAB executive secretary David Stucki from James Young president of the Wisconsin Higher Education Corporation (now the Great Lakes Higher Education Corporation) highlighting the inadequacy of bonds and calling for better student protections.

In addressing the inadequacy of bonds, the EAB staff examined how other states were handling school closure situations. It was noted that about half of the states in the country have a student protection fund. The EAB staff looked at various options and presented a proposal to create a student protection fund to the board June 2002. The result was enabling language that was put in the 2003-05 biennial budget. The only change made during the budget process was the addition of a \$1.0 million fee cap by the Joint Finance Committee. In July 2003, the Governor signed the budget with the student protection fund provision included.

Although the budget provided the EAB with the enabling language, the student protection fund needs to be implemented through administrative rule. At the board's September 2003 meeting, a statement of scope for the proposed student protection fund rule was approved. Subsequent to that, specific rule language was developed and a dialogue with the schools was initiated.

EAB-approved schools were sent specific information in terms of the impact of the rule language and their input was requested. Draft rule language was approved at the board's December 2003 meeting. The rule was then sent to the Legislative Council for review; and on January 22, 2004, the EAB received their comments, which were included in meeting materials for the public hearing. Also provided was the EAB's response to the specific comments posed by the Legislative Council. Written comments on the proposed student protection fund were received from the University of Phoenix.

Mr. Dies explained that under the proposed rule, when a catastrophic school closure situation occurs, the bond will not be the primary mechanism by which the EAB is going to protect students, it would be the student protection fund. While bond requirements will not be eliminated entirely, they will be significantly modified, and will become a financial stability measure, particularly for small schools. One of the limitations of bonds is that when a new school starts the bond requirements reflect information provided by the schools based on anticipated unearned tuition. Because of recent school closures and market conditions, some new schools have cited a difficulty in obtaining a bond.

Mr. Dies walked board members through the briefing document and directed their attention to the Legislative Council (LC) report. He commented on two issues identified in the report that concerned the EAB's statutory authority. The concern that the statutes use the term "course" and the rules use the term "programs" stems from rule changes that were made in 1997 and will be addressed in the next legislative session. The other issue raised in the report involved the EAB's desire to transfer unexpanded revenues exceeding 20% of the operating budget to the student protection fund. Mr. Dies conceded that the EAB needed statutory authority. The provision had been removed from the rule and authority will be sought in the 2005-07 biennial budget.

Beyond these two issues, the report commented on style, format and structure. All of these suggested changes were incorporated into the updated rule draft with the exception of those specifically noted in the briefing paper.

Mr. Dies directed the board's attention to written comments received from the University of Phoenix (UoP). He noted that the EAB has been regulating UoP for the past five or six years and within that period of time they have become its biggest school. Although UoP supported the concept and need for the student protection fund, they raised concern about the nature of the student protection fee being a flat fee so that it applies equally to the first dollar as it does to the last dollar. The letter also indicated that UoP is an accredited, degree-granting institution and therefore has less risk of closing as other schools. They indicate that smaller schools as a general rule are the ones that fail. Finally, they asked the board to consider these issues in the future when it adjusts school renewal fees.

Mr. Dies commented that while the UoP assessment is generally true, the EAB has an obligation to ensure that students, regardless of the kind of institution they are attending, are protected. As an example of a recent large accredited, degree-granting institution that has failed, Mr. Dies cited Mount Senario College. He also noted that the student protection fee structure that is tied to a school's revenue is fair and reasonable. For UoP, the fee is less than five-tenths of 1% of its total revenue. In addition, the EAB will retain the ability to reduce a school's bond, although the structure will be a lot different. Because of the \$1.0 million cap on the fund the EAB would not assess a fee once the fund reached that amount.

Mr. Dies noted that no person had registered in support or opposition to the rule or was present to testify regarding the rule and recommended that the board approve the revised rule language reflecting the Legislative Council's comments and the EAB staff response as discussed.

Mr. Cooney asked if the balance in the account would be subject to interest growth. Mr. Dies responded that interest would be generated because the funds would be held in the state treasury but it would not be credited to this appropriation. Mr. Rosinski concurred. He indicated that this is not a segregated trust fund but that it is an appropriation for the purpose of the student protection fund.

Mr. Cooney also asked if the fund could be used for schools or other entities that are not subject to EAB oversight and do not contribute to the fund. Mr. Dies said he specifically looked at this issue and because of the way the statutes are constructed, it would not allow funds to be used for any school that is not approved.

Mr. Raemisch had two questions. First, how long it would take to reach the \$1.0 million cap based on the number of schools that are currently approved? Second, once that appropriation cap is reached, can a new (small) school come in, which is a higher risk school, and pay nothing because the \$1.0 million cap is already reached? Mr. Dies answered the first question with a projection of about eight years, which was one of the things that the EAB looked at when it set the fee at \$0.50 per \$1,000 of revenue. He added that this time might be less if the EAB is able to transfer unexpended operating revenues into the fund. In response to the second question, it was noted that based on the way the rule is drafted, the new (small) school would not incur any fee. No school, including new schools, would pay a fee once the \$1.0 million cap is reached. When this issue was considered, it was concluded that most high-risk schools that are approved would have a required bond of \$25,000 and that would be sufficient to cover the initial start-up risk.

Mr. Craney asked what percentage of approved schools would be at the \$25,000 bond or 125%? Mr. Dies clarified that it would be 125% of the school's unearned tuition or \$25,000, whichever is less. A school with little revenue could have less than a \$25,000 bond as could a school that has no unearned tuition because it collects tuition after the education has been delivered. However, the smallest bond that a school could have would be \$1,000. The rule also retains the provision where the EAB could reduce the \$25,000 if the school meets certain criteria.

There being no other questions, a motion (Cooney/Brown) was made to approve the proposed student protection fund and was adopted 6-0. The public hearing was closed at 2:25 p.m.

In other business, Mr. Dies highlighted several of the issues that the board would be addressing at its upcoming meeting on March 4, 2004.

Mr. Craney asked if the EAB's initial proposal to transfer monies under the rule involved GPR funding. Mr. Dies clarified that since 1987 the EAB has been entirely program revenue funded by fees assessed on the schools.

There being no additional business to come before the board, a motion (Craney/Williams) to adjourn was unanimously approved at 2:30 p.m.