

EDUCATIONAL APPROVAL BOARD MEETING

Thursday, June 13, 2013

10:30 a.m.

1st Floor Conference Room
201 West Washington Avenue
Madison, WI

Members Present: Don Madelung, Jo Oyama-Miller, Robert Hein, William Roden, Katie Thiry, and Monica Williams

Members Absent: None.

Others Present: David Dies, Zachary Galin, Linda Heidtman, Blanca James, *Educational Approval Board*; Katie Rezin, *Bridgepoint Education*; Charlotte Gibson, Bruce A. Olsen, *Department of Justice*; T. Feemster, *DeVry University*; Jonathan Becker, *Government Accountability Board*; Brian Willison, *Herzing University*; Jarvis Racine, *ITT Technology–Greenfield*; Kate Misukanis, Nathaniel Orpen, *Rasmussen College*; Julie Parker, Marshall Whitcock, *Upper Iowa University*; Nathan Halbach, *Whyte Hirschboeck Dudek SC (University of Phoenix)*

The chair of the Educational Approval Board (EAB), Don Madelung, called the meeting to order at 10:31 a.m. Roll call was taken by Mr. Dies and quorum was established. A motion (Roden, Hein) to approve the March 19, 2013 board meeting minutes was adopted unanimously with Oyama-Miller abstaining.

BOARD CHAIR’S REMARKS

Mr. Madelung announced the two presentations about State Public Official Conduct and Open Meetings Law/Board Operations would be recorded. He noted the board would be holding two closed sessions during the meeting. Also, it was noted that former board members – Michael Cooney, Terry Craney, Joe Heim and Monica Williams, who had indicated she will be resigning – will be honored at the September meeting.

Ms. Williams arrived at 10:39 a.m.

PUBLIC COMMENT

Informal introductions of non-board members were made to familiarize new board members of the institutions in attendance (see “Others Present” above). No additional comments of record.

STATE PUBLIC OFFICIAL CONDUCT – PRESENTATION

A presentation by Jonathan Becker of the Government Accountability Board (GAB) provided information to the EAB board members on Wisconsin's laws involving ethics of public officials. Each member of the board is appointed by the Governor making them a state public official. In addition, because the EAB rules are created by the board, its members are subject to the lobbying law.

The GAB is an independent agency established to enforce these laws. Information was provided in more detail about the specific types of situations that were likely to arise as members of the EAB board. Mr. Dies clarified that EAB board members do not require confirmation by the Wisconsin Senate and are therefore not required to submit a Statement of Economic Interests. A question and answer session followed the presentation. The presentation was recorded.

OPEN MEETINGS LAW/BOARD OPERATIONS – PRESENTATION

A presentation about the state's open meetings law was given by Bruce Olsen from the Department of Justice (DOJ), which focused on communication among board members and the general public. The open meetings law applies to every governmental body in the State of Wisconsin. Because the EAB is statutorily created, meetings of the members of the body must comply with the open meetings law. He noted that a meeting is a gathering of members of the body for the purpose of exercising the body's powers or authority of responsibility, and a sufficient number of members are present to determine the course of action. Meetings can be held when publicly noticed and a quorum of the membership is present.

Requirements of the open meetings law requires that proper notice be given to the public, every meeting has to begin in open session, minutes are not required, and records of motions and call of the roll must be kept. In addition, closed sessions and penalties were summarized. An overview of the Open Meeting Compliance Guide was handed out; the website version is much more enhanced with links to opinions, cases and correspondence.

The specific role board members have under EAB's administrative code related to conducting hearings and making quasi-judicial determination in the approval of schools was discussed by Charlotte Gibson from the DOJ. She also discussed board issues related to conflicts of interest, *ex-parte* communications, decision-making processes, and appeals. A question and answer session followed the presentation. The presentation was recorded.

CLOSED SESSION – AMERSTATE UNIVERSITY LTD. VS. EAB APPEAL

A motion (Oyama-Miller, Williams) that the EAB board to go into closed session under s.19.85(1)(g), *Wis. Stats.*, for the purpose of conferring with legal counsel to consider pending litigation in the *Amerstate University Ltd. vs. EAB* appeal was adopted on 6-0 roll call vote.

The board entered closed session at 11:50 a.m.

OPEN SESSION

The board reconvened in open session at 12:40 p.m. Mr. Madelung noted the court had issued a final decision and order regarding the appeal by Amerstate University Ltd., but was remanded to the EAB, which would be responding to two issues the court had raised.

BOARD STATUS REPORT

Involvement in Postsecondary Education Policy Decisions

Mr. Dies discussed the provision proposed by the Governor in the 2013-15 state budget to transfer the EAB's administrative attachment to the Department of Safety and Professional Services (DSPS). That provision was removed by the Joint Committee on Finance (JCF), which means the Wisconsin Technical College System Board (WTCSB) will continue to provide administrative support to the EAB.

Positive Working Relationships and Alliance

Mr. Dies mentioned that a decision had been made to not hold an approved schools' conference in 2013; in large part because it was designed around the issue of accountability and establishing performance standards, which have been put on hold. It is the belief of EAB staff that the conference should be held to address a specific policy agenda, not to simply hold an event. Board members spoke highly of past conferences and expressed hope that it would be held again in the future.

Consumer Protection

Mr. Dies provided an update on recent developments in the *Mailen vs. EAB* case, which has been appealed to the circuit court. A complete history regarding the matter was provided in the March 2013 board meetings materials.

Postsecondary Educational Choices (Public Awareness & Understanding)

Mr. Dies noted that the EAB continues to enhance the public's awareness and understanding of schools it approves. He provided examples of how the EAB has been working collaboratively with the state Board of Nursing and the Wisconsin Hospital Association.

Operational/Administrative Procedures and Policies

Mr. Dies reported the EAB is moving forward with changes to its data management system so that the student outcomes data reported by schools during the annual renewal process will be cohort-based. Other changes involve enhancements to better maintain information for larger schools that have multiple campus operations. In addition, Houa Moua, the EAB's part-time Office Associate since late last year, resigned to accept a full time position at the UW. Meanwhile, Blanca James, the EAB's Operations Program Associate for the past 12 years has reduced her hours and moved into the vacant part-time position. EAB is currently in the process of recruiting for a full-time position.

SCHOOL APPROVAL ISSUES

Mr. Dies discussed the school issues and approval actions taken by staff. Following some discussion, a motion (Oyama-Miller, Williams) to approve items “A” through “T” of the School Activity Report for the period of March 8 through June 4, 2013, was unanimously approved.

REGULATION OF POSTSECONDARY DISTANCE EDUCATION

Mr. Dies mentioned the comprehensive briefing paper provided at the March 2013 board meeting about limiting the amount of state regulation that currently exists for accredited, degree-granting institutions offering programs via distance learning was included in the materials. He proceeded to provide an update on recent efforts to create a system for interstate reciprocity based on the voluntary participation of states and institutions, and administered by the four existing regional higher education compacts.

Mr. Dies indicated that he had attended a national symposium about the adoption and implementation of a State Authorization Reciprocity Agreement (SARA). This initiative has significant implications, particularly for those states that regulate programs offered via distance learning. He also reported that discussions took place among the state regulators attending the National Association of State Administrators and Supervisors of Private Schools (NASASPS) meeting. As a result of the discussions, NASASPS sent a letter addressing these shared concerns to the leadership of the four regional higher education compacts.

The EAB staff recommended the board formally oppose SARA and communicate its opposition to the Midwest Higher Education Compact (MHEC) commissioners that represent Wisconsin.

A motion (Oyama-Miller, Thiry) to table the EAB staff recommendation opposing SARA failed (3-3, No - Hein, Roden and Williams). Discussion was held.

A motion (Williams, Roden) to approve the EAB staff recommendation opposing SARA failed (3-3, No - Madelung, Oyama-Miller and Thiry). Discussion held.

A motion (Hein, Oyama-Miller) that a letter be sent to the MHEC stating that the EAB recognizes consumer protection is important to the state of Wisconsin and that continued dialogue in consideration of Wisconsin issues for consumer protection be incorporated into the SARA dialogue and policies that come out of it, and that responses to the questions raised by NASASPS be addressed, was unanimously adopted.

EAB MODERNIZATION BILL

Mr. Dies stated that the EAB has been attempting to bring its statutes into the 21st century with a “modernization” bill. The legislation would not expand the EAB’s authority, but create a better regulatory framework; one that is aligned with current administrative practices and is tied to the agency’s focus on institutional effectiveness. Legislation was introduced in

both the 2007 and 2011 legislative sessions, and EAB staff would like to have the same bill with a few modification introduced during the 2013-15 legislative session.

A motion (Oyama-Miller, Roden) that the board formally endorse efforts to seek the enactment of modernization legislation during the 2013-15 legislative session was unanimously adopted.

EAB STRATEGIC PLAN

Mr. Dies provided information about the EAB's strategic plan. Although the board concurred with the recommendation that a new strategic plan be developed, a question was raised about accomplishments of the 2008-13 Strategic Plan's goals and objectives. Mr. Dies offered to prepare a report for the board's review. No action was taken.

CLOSED SESSION – EXECUTIVE SECRETARY PERFORMANCE/COMPENSATION

A motion (Oyama-Miller, Roden) to hold a closed session under s.19.85 (1) (c), *Wis. Stats.*, to consider the performance and compensation of the executive secretary in accordance with s.38.50 (5), *Wis. Stats.*, was approved on a 6-0 roll call vote.

The board entered closed session at 1:53 p.m.

OPEN SESSION

A motion (Roden, Williams) that the board reconvene in open session was unanimously approved at 2:32 p.m.

EXECUTIVE SECRETARY PERFORMANCE/COMPENSATION

A motion (Oyama-Miller, Roden) was unanimously adopted to table consideration of the executive secretary's performance and compensation until June 21 when the board will meet via teleconference, and after board members have provided comments to the chair so that they can be compiled and discussed during the conference call.

ADJOURNMENT

A motion (Thiry, Oyama-Miller) to adjourn was unanimously approved at 3:42 p.m.