

EDUCATIONAL APPROVAL BOARD MEETING

Thursday, September 12, 2013
10:30 a.m.

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

Members Present: Robert Hein, Don Madelung, William Roden

Members Absent: Jo Oyama-Miller

Others Present: David Dies, Zachery Galin, Linda Heidtman, Blanca James, Mary Ruhland, Patrick Sweeney, *Educational Approval Board*; Anne Murphy, Department of Justice; Terry Craney; Jackie Curtis, Brian Olson, Jennifer Paugh, Herzing University; Joe Heim, University of Wisconsin-LaCrosse; Julie Parker, Marshall Whitcock, Upper Iowa University

The chair of the Educational Approval Board (EAB), Don Madelung, called the meeting to order at 10:30 a.m. Roll call was taken by Mr. Dies and it was established that a quorum was present. A motion (Hein, Madelung) to approve the June 13 & June 21, 2013 board meeting minutes was adopted unanimously.

BOARD CHAIR'S REMARKS

Mr. Madelung announced the resignation of Katie Thiry, which means the board now has three vacancies. He noted the board would be holding a closed session at the end of the meeting under s.19.85(1)(g), *Wis. Stats.*, for purposes of conferring with legal counsel for the body concerning strategy in pending or threatening litigation. He also stated the board would defer its honoring of four past board members until they arrived. A welcome was extended to new EAB personnel, Mary Ruhland, Operations Program Association and Jessica Sabin, Program and Policy Analyst.

PUBLIC COMMENT

None.

BOARD STATUS REPORT

Involvement in Postsecondary Education Policy Decisions

Mr. Dies provided the board with a status update regarding state authorization and a recently released "Dear Colleague" letter. Based on the guidance provided by the U.S. Department of

Education (USDOE), an Executive Order (EO) issued by a Governor would satisfy “other action” under the federal rule requirements. As it relates to a number of Wisconsin institutions, the Governor issued has EO #37 and specifically named them because in-state nonprofit institutions are not regulated by any state agency and as a result they did not meet the federal standards.

Positive Working Relationships and Alliance

Mr. Dies indicated that the EAB continues to work proactively with a number of different agencies. Information provided in the meeting materials provides examples of how the agency is working with the Board on Nursing (BoN) and organizations like the Wisconsin Hospital Association.

Consumer Protection

Mr. Dies provided information about an individual who has repeatedly filed complaints with the EAB involving several different institutions that he has attended. Information shared included a letter that summarized the most recent complaint and the nature of the complaint that had been previously closed.

Operational/Administrative Procedures and Policies

Mr. Dies echoed Mr. Madelung’s enthusiasm about the addition of new EAB staff and is excited about the expertise they bring to the agency. Information regarding EAB’s interagency use agreement with the Department of Veteran Affairs (DVA) was discussed. It was explained by Mr. Dies the agreement contains a provision that allows either party to get out of the agreement after one-half the 5-year agreement period has passed, with a 12-month advance notice by either party. DVA has exercised this provision, which means the EAB will need to vacate current office space no later than December 31, 2014. The EAB is working with the Division of State Facilities at the Department of Administration, which works with state agencies to arrange office space. The EAB has limited input, but is hopeful a suitable alternative will be found.

SCHOOL APPROVAL ISSUES

Mr. Madelung pointed out to all attendees that board meeting materials are generally available on the EAB website the week before each scheduled meeting.

Mr. Dies proceeded to inform the board that the EAB had formally wrapped up its efforts regarding the closure of Everest College-Milwaukee. The school is now closed and information has been provided to former students on how to get continuing support by directing them to job centers and an alternative to go to the Chicago campus.

Information provided in the meeting materials included a recent letter from the EAB requesting the school provided certain student records. He noted the EAB had been working with the Department of Justice (DOJ) regarding circumstances surrounding the school’s closure.

Mr. Dies indicated the EAB learned on September 11, 2013 that a final ruling regarding the *Amerstate University vs. EAB* matter had been issued, subsequent to the preparation of board materials. Even though a Final Order and Decision was issued by the court in May, there were a number of issues remanded to the EAB board. At the request of counsel for the board, EAB staff addressed a series of questions raised by the court. The board filed a brief in July responding court. Subsequently, attorneys for Amerstate also filed a brief related to the remanded information.

Ultimately, the court maintained its Final Order and Decision and agreed the sanctions that were imposed by the board to revoke the approval of Amerstate where appropriate; rejecting the school's position that staffing changes within the EAB could somehow allow the agency to use a lesser sanction and in some way monitor them more closely. While the EAB is satisfied with the outcome, there are other appeal options that Amerstate could choose to exercise.

A motion (Roden, Hein) to approve items "A" through "I" of the School Activity Report for the period of June 5 through September 5, 2013, was unanimously approved.

Mr. Hein asked if the board needed to approve items "J" and "K." Mr. Dies explained that the board acts to affirm only the approval related items (e.g., school visits, complaints, school issues, etc.) that are contained in items "A" through "I." Items "J" and "K" pertain to student complaints and schools visits and are provided for informational purposes only.

EAB MODERNIZATION BILL

Mr. Dies reported that the EAB intends to include a number of additional statutory changes related to the bill's enforcement and penalty provisions, which were not substantively changed in previously introduced versions of the bill. In August, the EAB staff met with attorneys from DOJ to help identify changes that would improve existing enforcement and penalty provisions. To a great extent these changes will simply involve creating a better framework of existing provisions. The summary provided in the meeting materials is an overview of the meeting between EAB and DOJ in August.

At the last board meeting, background information was provided to board members, including a narrative explanation of the bill, and a before and after summary of the major sections of the statutes. A second summary document laid out in table format the changes, the structure, and showed how the bill was being realigned. Mr. Dies indicated that the board endorsed moving forward with the modernization legislation at its last meeting. It was agreed that no further board action was necessary.

REGULATION OF POSTSECONDARY DISTANCE EDUCATION

Mr. Madelung, who is also a Midwest Higher Education Compact (MHEC) commissioner, explained that MHEC is part of an effort to establish a State Authorization Reciprocity Agreement (SARA) for online education in all 50 states. This institutionally-led effort is progressing quickly and EAB staff has raised some concerns. At its last meeting, the board

was split on opposing the reciprocity initiative because some members did not feel they had enough information. The board agreed to write a letter to MHEC seeking a response to questions and concerns that had been raised by the national association that represents state higher education regulators.

Mr. Madelung informed audience members that there was both good news and bad news for institutions. The good news is reciprocity would mean a school would only need approval from the (home) state in which it is domiciled, and pay a nominal annual fee of 2, 4 or 6 thousand dollars depending on total enrollment. The bad news is the impact on states such as Wisconsin, which stands to lose not only revenues, but the ability to collect student outcome information. As a result, many Wisconsin-based schools will see their fees increase.

Mr. Madelung indicated that MHEC wants to engage states and regulatory agencies. MHEC still wants states to oversee complaints and other concerns much like they have done in the past. It is unclear if there is an opportunity for the states to charge a fee for out-of-state schools in addition to what schools would have to pay for reciprocity.

Mr. Dies clarified that the fees of the home state would still apply, in addition to the cost of participating in the reciprocity agreement. In addition, while there may be a common application for purposes of SARA, institutions would also need to complete whatever approval processes the home state requires.

For purposes of understanding the fiscal impact of SARA, it is estimated the EAB would lose nearly \$270,000 of revenue, which would consist of \$135,700 from renewal fees and \$134,000 from one-time, fixed revenues related to schools going through the initial approval process. Under the EAB's current fee structure, this lost revenue would be passed on to institutions that will continue to be approved. The result would be renewal fees would more than double.

Mr. Madelung asked about how states and institutions will participate in SARA. Mr. Dies responded that a state must first decide if it will participate. If a state elects to participate, then institutions that are domiciled in the state have the option of participating. The cost for an institution to participate will be based on total FTE enrollment – \$2,000 for institutions with under 2,500 students; \$4,000 for institutions with 2,500 to 10,000 students; and, \$6,000 for institutions with under more than 10,000 students.

Mr. Hein mentioned that one of his concerns is that if a student had a complaint it would go to the home state. Mr. Madelung asked about the downside if the EAB or the institutions decided not to participate. Mr. Dies responded that the way SARA would be structured is it would basically preclude Wisconsin from intervening with a complaint from an online student. In addition, he indicated that participation is not an EAB decision, but one the state will make, presumably the Governor or the state's MHEC commissioners.

Mr. Dies explained that a letter to MHEC had been drafted and was included in the meeting materials for review by the board. At its June 2013 meeting, the board acted to send a letter stating the EAB recognizes the importance of consumer protection 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 the national association of higher education regulators be addressed.

Subsequent to the June 2013 board meeting, EAB staff learned of a response to state higher education regulators provided by the Western Interstate Higher Education Compact on behalf of the four regional compacts. Mr. Dies stated he feels the letter did not come close to the kinds of questions that the state regulators were asking.

EAB staff also had an opportunity to meet on September 4, 2013 with Wisconsin's three higher education sectors – UW System, Wisconsin Technical College System, and Wisconsin Association of Independent Colleges and Universities. Mr. Dies noted that it seems all three sectors are supportive of the SARA, which is not surprising given that they represent institutions. All three sectors see this as an advantage because they will not have to worry about how they operate in any of these other states regardless of what they are doing now.

Mr. Dies noted that MHEC has not reached out to the EAB and does not see a need to do so, nor do they want to, because of the way in which SARA is being driven. It is a very institutionally-led initiative and they frankly do not want to have conversations with regulators. His feeling is MHEC is basically end running the EAB at this point.

Mr. Madelung commented that MHEC is holding a November meeting in Omaha, at which time the people selected for the National Coordinating Council (NCC) for SARA will be finalized. He indicated that SARA is moving quickly and is receiving financial support from interested parties. Mr. Dies noted the Lumina Foundation recently awarded a grant of \$2.3 million to support the work of SARA.

Mr. Madelung encouraged all schools take a careful look at the implications of SARA, adding that what looks good on the surface may not end up to be as advantageous for institutions as they think. Mr. Dies pointed out that while the percentage fee increase on all non-SARA institutions will be the same, the impact likely will be felt more by smaller owner-operated institutions. He added that SARA essentially shifts fees from large corporate, accredited, degree-granting entities that operate online in numerous states to smaller owner-operated, non-degree entities that operate within a given state.

Mr. Roden asked what action the board needed to take at the meeting. Mr. Dies responded that he would like the board to make a decision about sending the draft letter to MHEC. A brief discussion occurred.

A motion (Hein, Roden) to send letter to MHEC, was approved unanimously.

RECOGNITION OF FORMER BOARD MEMBERS

Four former members of the EAB board were recognized for their service. Mr. Madelung spoke about the service of Michael Cooney, Terry Craney, Joe Heim and Monica Williams, and presented plaques to Mr. Cooney and Mr. Heim, who were in attendance.

CLOSED SESSION – PERCEIVED CONFLICT BETWEEN EAB STATUTES & ADMINISTRATIVE RULES

A motion (Roden, Hein) to hold a closed session under s.19.85 (1) (c), *Wis. Stats.*, to confer with legal counsel concerning strategy about threatened litigation related to a perceived conflict between the statutes and the administrative rules, s.38.50 (5), *Wis. Stats.*, was approved on a 3-0 roll call vote.

The board entered closed session at 11:20 a.m.

ADJOURNMENT

A motion (Roden, Hein) to adjourn was unanimously approved at 12:23 p.m.