

EDUCATIONAL APPROVAL BOARD MEETING

November 20, 2013
10:30 a.m.

3rd Floor, Room 324
201 W. Washington Avenue
Madison, WI

Members Present: Don Madelung, Robert Hein, William Roden, Jo Oyama-Miller

Others Present: David Dies, Zachery Galin, Linda Heidtman, Mary Ruhland, Jessica Sabin, Patrick Sweeney, *Educational Approval Board*; Nathan Halbach, *University of Phoenix*

The chair of the Educational Approval Board (EAB), Mr. Madelung, called the meeting to order at 10:32 a.m. Roll call was taken by Mr. Dies and it was established that a quorum was present. A motion (Hein, Oyama-Miller) to approve the minutes of the September 12, 2013 and the September 26, 2013 board meetings was adopted 3-0-1 (Ms. Oyama-Miller).

OVERSIGHT OF ACCREDITED SCHOOLS

Mr. Dies reported the EAB submitted to the Governor's Office a Statement of Scope following the September 26 board meeting to establish permanent and emergency rules addressing a conflict between the statutes and administrative code concerning the exemption of accredited schools. After several weeks passed, the EAB made inquiry about the status of its Statement of Scope, which resulted in a meeting on October 18. Although the Statement of Scope has not been denied, the Governor's Office indicated they believe the issue of regulating out-of-state institutions is one that should involve the Legislature, and therefore would not be taking action at this time.

Mr. Dies noted that the Governor's inaction creates a dilemma. While two institutions approved have been informed that the EAB will not enforce its approval requirements, it has not responded to several other institutions that have made similar inquiries about being exempt based on their accreditation status. At the same time, the EAB receives daily inquiries from out-of-state institutions that wish to comply with the approval requirements, but have not raised questions about the exemption provision. There also are a number of institutions at various stages of the approval process, including those that have already obtained a surety bond and/or submitted fees, which the EAB is continuing to move through the approval process.

Issues related to the oversight of accredited institutions include the federal state authorization requirements, the State Authorization Reciprocity Agreement (SARA) effort, and the impact on EAB renewal fees.

State Authorization

Mr. Dies discussed how the EAB's statutory exemption provision "based on accreditation" is in direct conflict with the U.S. Department of Education's (USDOE) provision that basically says a state may not exempt an institution from its approval or licensure requirements on the basis of accreditation. While the federal rule would appear to address the exemption question, the specific provision of the rule that required distance education programs to get permission to operate from every state in which they enroll students was overturned by a federal court on procedural grounds and is not currently being enforced.

Mr. Madelung questioned if the EAB sought counsel on the issue to which Mr. Dies responded it had and that the Department of Justice was involved in developing the Statement of Scope sent to the Governor's Office. Mr. Madelung also asked if the Governor's Office felt the federal verbiage was not strong enough for them to be in the posture of telling out-of-state institutions that they need to pay. Mr. Dies reiterated that the USDOE is not currently enforcing the portion of the rule that deals with the out-of-state institutions because of the court's ruling.

However, as it relates to overseeing accredited that operated in Wisconsin, such as Herzing University, Madison Media Institute, Globe University, Rasmussen College, ITT Technical Institute, and University of Phoenix, Mr. Dies does not believe there is any question that the state has to be involved in overseeing institutions; otherwise these institutions will lose their eligibility for federal financial aid. The question is what about the 75+ out-of-state institutions that are accredited and overseen by EAB at this time, such as Capella University, Walden University, University of Southern California, Georgetown University, and others.

Reciprocity

According to Mr. Dies, SARA will limit state regulation for all accredited, degree-granting institutions offering online programs that happen to be domiciled in another state. If Wisconsin chooses to participate in SARA, it essentially will have the same effect as exempting out-of-state institutions on the basis of being accredited. While the state's participation in SARA remains unclear, it also could be a year or more before participation by institutions would fully take effect. Moreover, the decision is voluntary for both states and institutions.

Mr. Dies informed board members about an upcoming webinar that will provide a status update about SARA. Mr. Dies indicated that it is his understanding that each state will need to have designated "portal agency." Mr. Madelung said he came away from the recent Midwest Higher Education Compact (MHEC) meeting with the understanding there could be multiple portal agencies.

Mr. Madelung suggested contacting Senator Harsdorf and Representative Nass who are two of Wisconsin's commissioners for MHEC who would know status of SARA legislation for the State of Wisconsin. Mr. Madelung indicated he has heard there will be a meeting during the spring of 2014, perhaps by the Joint Committee on Finance since the Legislature is not in

session at this time. He added it appears the Legislature will hold a conversation with the public with the possibility introducing legislation in 2015. He also noted that MHEC is aware that a number of states in the southern regional compact are very resistant to SARA at this time.

Mr. Dies stated that he believes Wisconsin will be a SARA participant given the UW's flex degree initiative and not wanting to worry about getting approved in other states. As such, the EAB has spent its energy trying to get the issue of collecting student outcomes on the table. Ms. Jenny Parks, Director of SARA for MHEC, will be in Madison on December 19 and would like to sit down with the EAB staff to review its student outcomes collection methods and metrics.

Mr. Madelung questioned if the board members would be invited to the December 19 meeting as Ms. Parks could update them on SARA. Mr. Dies indicated that the purpose of the visiting with EAB staff is so Ms. Parks can see how the EAB collects data. Moreover, if a majority of the board is present it would need to be treated as a public meeting and properly noticed.

Mr. Madelung polled board members about their interest in attending. Ms. Oyama-Miller recommended a presentation to the board about the EAB's student outcomes reporting as she would like the board at some point in the future to reconsider developing standards.

Mr. Dies indicated the board is scheduled to meet on December 13. One of the key issues to be addressed will be establishing the 2nd payment renewal fee multiplier. The other key issue, which the EAB's Program and Policy Analyst is working on, is pulling together outcome data from the most recent renewal to start to identify certain types of trends.

It was asked by Mr. Madelung if the EAB could contact Ms. Parks regarding availability on December 13 versus December 19. Mr. Dies noted that Ms. Parks' main reason for coming to Madison was for a group meeting with officials from the UW System, Wisconsin Technical College System, Wisconsin Association of Independent Colleges and Universities, and the EAB.

Renewal Fees

Mr. Dies noted that the impact of SARA on school renewal fees had been discussed at previous board meetings. He reiterated that no longer approving 75+ out-of-state institutions will have a significant impact on fees. Mr. Dies stated the revenue no longer collected from the out-of-state institutions would be shifted to institutions with a campus in the state. This will impact truck driving institutions, massage therapy institutions, pet grooming institutions, as well as Globe University, Rasmussen College, ITT Technical Institute, Madison Media Institute, etc. Alternatively, the EAB would need to cut staff.

Given the current statutory responsibility is the consumer protection of Wisconsin residents, it was recommended by staff that the EAB maintain the status quo and continue overseeing institutions that are currently approved. However, new institutions that inquire about

approval would be informed that the EAB had suspended approving new out-of-state institutions offering online programs to Wisconsin residents pending a decision about SARA. This would prevent the EAB from approving new schools only to turn around and tell them they don't need approval should Wisconsin become a SARA participant. The EAB would continue to approve the institutions that are currently approved and would continue to move through the approval process with those institutions that are currently in the process of seeking approval.

Mr. Roden questioned what governmental body will decide whether or not Wisconsin will join SARA. Mr. Madelung responded it is not the EAB; likely the Legislature. Mr. Dies pointed out that it may be the Legislature, but it could also be the Governor, who may be able to simply issue an executive order. At this time, however, there is not a concrete answer to the question.

Mr. Dies noted that at its June 2013 meeting, the board was deadlocked on whether to support or oppose SARA resulting in the EAB sitting on the sidelines. Mr. Madelung responded that he is confident if the EAB had come out in opposition, it would not have stopped the process to implement SARA. It was pointed out by Mr. Dies that important questions about SARA have yet to be answered and a number of states, particularly those that belong to the southern higher education compact, are holding off on participating because of the downsides of SARA. For example, under SARA, states will lose control over handling student complaints of their residents who attend out-of-state online institutions.

Ms. Oyama-Miller indicated that she believes there is a big change nationwide; a lot more scrutiny of for-profit and public institutions alike. The federal government is starting to ask questions like who is being educated and how well are they being educated. She questioned the impact of SARA, not just on the EAB but to the consumer protection of students. She asked Mr. Dies what the fiscal impact would be if the 75+ institutions were no longer subject to EAB approval.

Mr. Dies pointed out that he shared information and data about the fiscal impact at the board's September 2013 meeting, which has since been refined. First, there would be a projected loss of \$134,000 in one-time, fixed revenues related to out-of-state institutions going through the initial approval process. In addition, the renewal fees paid by out-of-state institutions that enroll Wisconsin students totaled roughly \$135,700 in 2013. Therefore, the fiscal impact on the EAB is estimated to be \$269,700.

Mr. Dies told the board that the multiplier for 2012 was about \$0.80 per \$1,000. However, it was not that long ago when the multiplier was over \$5.00 per \$1,000 and has dropped over the past 10 years, in part, because of the additional revenues from out-of-state institutions coming into Wisconsin with online programs and serving some 26,000 students.

Mr. Madelung stated schools may be in favor SARA as it provides opportunities for more global online program teaching. However, this may substantially raise the EAB fees resulting in a crippling effect. Institutions need to be educated and informed before making a decision about participating.

Mr. Dies mentioned another unknown is how the EAB oversight of Herzing University will change, since it is domiciled in Wisconsin. Because it has an online component, the EAB would assume responsibility for Herzing students that reside in other states, assuming both the state and the institution participate in SARA. Under reciprocity, the EAB could potentially collect revenues for those students, which would offset some of the revenue from the out-of-state institutions.

Ms. Oyama-Miller questioned if the EAB could work on an agreement until either SARA is adopted by the Legislature or authority of a tentative approval rather than suspending approval any new out-of-state institutions. That would allow the EAB will collect revenue and show its effort to create jobs and businesses in the state. Mr. Dies expressed concern that the EAB would be treating institutions differently, which could have legal implications.

Mr. Hein asked if the EAB has any other options beyond the one recommended. Mr. Dies indicated there are essentially three options. The first would be to try to challenge the schools' interpretation of the exemption provision in court. Mr. Dies indicated the AG's has not recommended this option. The second is to maintain the status quo which is consistent with the EAB's consumer protection responsibilities. The third would be to no longer approve any accredited institution.

Mr. Roden stated that putting everything aside, nothing will have changed; there would be no statutory or administrative code change. What remains is a federal rule with which the EAB needs to be in compliance. Mr. Roden approves of what Mr. Dies has told the institutions questioning the exemption provision; that this issue is unclear and the EAB is not going to enforce the EAB oversight until it is clarified. Mr. Roden agrees the EAB should maintain the status quo as staff has recommended.

Ms. Oyama-Miller wanted to know if her understanding was correct that the board sent a letter about SARA to MHEC seeking answers to questions and that MHEC had not responded. Mr. Dies indicated that he reported at the last board meeting a response had been received, but MHEC did not address the substance of the EAB's letter.

Ms. Oyama-Miller recommended that the board continue to have Mr. Dies contact state legislators on behalf of the EAB board. She recalled an earlier board discussion that members individually or collectively contact legislators. Mr. Dies stated that board members are not prohibited from advocating on behalf of the EAB, as long as they are speaking with one voice – the board's voice.

Mr. Dies indicated the board could revisit the recommendation EAB staff made to the board at its June 2013 to oppose SARA. Presently, he does not have the authority to say one way or the other whether the EAB supports or opposes SARA. There is a possibility that opposition by the EAB could still influence the state's decision about participating in SARA, and to the extent possible, Mr. Dies would like to control the issue in hopes of avoiding the EAB's demise. For the time being, he is pushing to maintain the EAB's ability to collect student outcomes and can get the issue of data collection on the table. Mr. Dies indicated that it may be possible to get the EAB designated as the state's portal agency.

Mr. Madelung observed that there is so much influence from the UW and WTCS; it would not benefit the EAB to oppose SARA. Ms. Oyama-Miller responded that the EAB can still have influence in the process and that collecting student outcomes benefit others like the UW and WTCS.

A motion (Roden, Hein) was made recommending that given the uncertainties of whether or not Wisconsin will participate in the State Authorization Reciprocity Agreement through the four regional higher education compacts the EAB suspend approving any new out-of state institutions until a decision is made, but would continue to approve institutions that are currently in the process of seeking approval.

Ms. Oyama-Miller suggested the motion also state that the EAB should maintain the status quo regarding the oversight of accredited schools that are currently approved. Mr. Roden and Mr. Hein agreed to amend the original motion to include language that was suggested by Ms. Oyama-Miller. The motion, as amended, was approved unanimously.

Mr. Dies asked if the board, given its discussion, wished to take any further action regarding communicating with MHEC commissioners. As previously stated, Mr. Dies indicated he is hesitant to engage in a conversation given the board has not taken a position. While he would be comfortable expressing the EAB's reservations and concerns with SARA based on the current motion before the board, he feels it would be helpful to have clearer direction from the board when speaking with MHEC commissioners

Mr. Madelung stated for the record the five MHEC commissioners: Senator Sheila Harsdorf, Chair of the Senate Committee on University & Technical Colleges, Wisconsin State Legislature; Donald G. Madelung, President, Madison Media Institute-College of Media Arts; Representative Stephan Nass, Chair, Committee on Colleges and Universities, Wisconsin State Legislature; Ralph Wegenke, President, Wisconsin Association of Independent Colleges and University; and Gerald Whitburn, Regent, University of Wisconsin System Board Regents. There are 2 alternates: Morna Foy, President, Wisconsin Technical College System; and David Miller, Senior Vice President for Administration & Fiscal Affairs, University of Wisconsin System. All commissioners attended the recent MHEC meeting except for Gerald Whitburn and Morna Foy.

A motion (Roden, Oyama-Miller) was made to authorize Mr. Dies to meet with MHEC commissioners and share with them the boards concerns, and to address the gaps that exist which need to be closed.

Ms. Oyama-Miller suggested adding to the motion a board statement that Mr. Dies could share with the MHEC commissioners regarding the EAB's concerns. Following further discussion Ms. Oyama-Miller suggested going back to the original motion. Mr. Dies indicated that he would use language from the EAB letter addressed to MHEC.

Mr. Madelung commented that he would abstain from the original motion even though he did support the letter to MHEC. Mr. Madelung indicated that there is still a lot of clarification

needed and a lot of educating to be done. In addition, he is concerned about creating a firm statement opposing SARA without knowing details.

Ms. Oyama-Miller explained that she does not want MHEC commissioners to perceive the EAB's concerns as only those of Mr. Dies. Mr. Dies asked if any board members would be interested in attending any meetings; Mr. Roden and Ms. Oyama-Miller indicated they would be willing to attend.

Mr. Madelung sought to clarify the motion. If it represents to MHEC commissions the position previously delineated in the letter sent to MHEC and already approved by him, he would not have to abstain. However, if the motion went back to the original split board vote taken in June, he would have to abstain. Mr. Dies stated that the motion was to simply meet with the MHEC commissioners to share concerns and educate them about SARA. With that said, Mr. Madelung said he was good with the motion.

Mr. Madelung called the question and the motion was approved unanimously.

Ms. Oyama-Miller requested the board consider at a future time a review of the performance standards that were brought to the board by the EAB staff. Mr. Dies indicated that briefing paper about student outcomes will be on the agenda for the December meeting.

ADJOURNMENT

A motion (Oyama-Miller, Roden) to adjourn was unanimously approved at 11:39 a.m.