

EDUCATIONAL APPROVAL BOARD MEETING

March 12, 2014
10:30 a.m.

1st Floor Conference Room
201 W. Washington Avenue
Madison, WI

Members Present: Don Madelung, Robert Hein, William Roden (via videoconference), Jo Oyama-Miller

Others Present: David Dies, Linda Heidtman, Blanca James, Jessica Sabin, Patrick Sweeney, *Educational Approval Board*; Wendy Coomer, *Foley & Lardner (representing Bridgepoint)*; Phyllis Mogreleski-Watson, *Laureate Education (Walden)*; Nathaniel Orpen, *Rasmussen College*; Nathan Halbach, Mike Rogowski, *Whyte Hirschboeck Dudek SC (representing the University of Phoenix)*; Julie Parker, Marshall Whitlock, *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 a quorum was present. A motion (Hein, Roden) to approve the December 13, 2013 board meeting minutes was adopted unanimously.

BOARD CHAIR'S REMARKS

Mr. Madelung had no opening remarks.

PUBLIC COMMENT

There were no public comments.

BOARD STATUS REPORT

Mr. Dies indicated his report would be longer than normal because of the numerous issues with which the EAB is involved. He indicated he would take each issue by section and allow for any questions or discussion after each section.

Involvement in Postsecondary Education Policy Decisions

–The U.S. Department of Education (USDOE) is revisiting the issue of authorization for institutions that offer online programs in other states and will be holding another round of negotiated rulemaking. Details pertaining to the USDOE's previous attempt to adopt such a regulation are provided in the board materials.

Mr. Dies informed the board that the entire proposal fails if the negotiated rule-making committee does not reach consensus. If consensus cannot be reached, the USDOE then has the ability put forward a proposed rule. Following a public comment period, a final rule could be published as proposed, modified or withdrawn. Mr. Dies said one of the reasons the EAB is closely following the process is because the USDOE has indicated it is seeking input about how reciprocity agreements might be treated in the rule. The EAB intends to share some of its concerns, as well as the questions NASASPS has raised, given that this information has not been shared with the USDOE.

Student Debt Bill – The EAB offered testimony during public hearings on legislation aimed at addressing the problem of higher education student debt. The EAB expressed concern that an “institution of higher education” was defined four different ways in the bill. In addition, the EAB suggested that the legislation be amended to include students who attend for-profit institutions, which are effectively excluded from the bill’s provisions.

Nursing Rules – The EAB testified during a public hearing on changes to the administrative rules for schools of nursing and suggested the Board of Nursing consider changes to make the definition of accreditation less confusing.

Positive Working Relationships and Alliances

Yoga Teacher Training – It was reported that EAB staff arranged a meeting with the yoga teacher training schools to discuss whether the standards of the Yoga Alliance are aligned to produce competent yoga teachers, the YA’s new “Social Credentialing” effort, and the use of the term Yoga Therapist.

NASASPS Annual Conference / NCHEMS / WCET Workshop – Mr. Dies noted that he would be serving on a panel with past NASASPS presidents at the upcoming annual conference to address the changes in state regulation. In addition, the EAB has been sharing information about the student outcomes data it collects with staff from the National Center for Higher Education Management Systems. Finally, it was reported that Mr. Dies had been invited to serve on a panel at the WCET workshop, which is the WICHE (western regional higher education compact) Cooperative for Educational Technologies.

Student Outcomes Research – Information was shared about the EAB’s collaboration with Sara Goldrick-Rab, a professor at University of Wisconsin - Madison, and Russell Cannon, a researcher and Ph.D. candidate, to whom the most recent raw student outcomes data has been provided.

Department of Workforce Development – Mr. Dies briefly commented that the EAB had been working cooperatively with the Department of Workforce Development to determine if a particular school that receives workforce development funding needs EAB approval.

Consumer Protection

For-Profit Investigations and Lawsuits – Information was provided summarizing a number of state AG investigations and lawsuits involving for-profit institutions. It was also noted that the federal Consumer Financial Protection Bureau (CFPB) had filed a lawsuit against ITT Educational Services accusing them of engaging in predatory lending and abusive practices.

Postsecondary Educational Choices (Public Awareness & Understanding)

Media Relations – Mr. Dies noted there was an article in the Wisconsin State Journal following the board’s December 2013 meeting that examined student outcomes based on the information shared.

Student Outcomes – It was reported that the student outcomes data from the 2012 cohort had been revised to reflect updated information. At the same time, the EAB has created a report targeted at a wider audience, which will be available on the EAB’s website.

EAB Website – Mr. Dies provided a screenshot showing how the EAB’s website was changed to enable the display of student outcomes data from the 2012 cohort.

Operational/Administrative Procedures and Policies

Mr. Dies reported the EAB’s expenditures and revenues are consistent with the budget and mentioned a number of personnel changes.

SCHOOL APPROVAL ISSUES

Recording Radio Film Connection (RRFC) – Mr. Dies reported that the RRFC had met the conditions for approval set forth by the Department of Justice. With the assistance of the Attorney General, the EAB was able to get the school to satisfy the school and program approval requirements. After many revisions and modification to their application, the school was approved on March 11, 2014. In response to a question from Ms. Oyama-Miller about the EAB establishing any contingencies, Mr. Dies indicated none had been set.

A motion (Oyama-Miller, Roden) to approve items “A” through “I” of the School Activity Report for the period December 4, 2013 through March 5, 2014 was adopted unanimously, with one correction – Rockford Community College should read Rockford Career College.

Mr. Hein asked for clarification of the term “suspended” that is used in the report. Mr. Dies called attention to the board’s decision on November 20, 2013 suspending the approval of out-of-state institutions offering online programs. Mr. Dies explained “suspended” is the term EAB staff are using to tract those institutions.

STATE AUTHORIZATION RECIPROCITY AGREEMENT

Mr. Dies provided some background information dating back to the November 2013 board meeting when the EAB took action to suspend the approval of any new out-of-state institutions until it had a better idea about whether or not Wisconsin will join SARA. At the board’s December 2013 meeting, Mr. Dies provided an update on SARA activity and heard a presentation by Jenny Parks, the director of SARA for the Midwest Higher Education Compact (MHEC). The board also was informed that a MHEC-sponsored meeting with representatives from the UW System, WTCS, WAICU and EAB has been cancelled due to concerns by some of the stakeholders.

MHEC officials hosted a meeting on January 10, 2014 in Chicago, where a select number of individuals from compact-member states were invited. Individuals from the UW System, WTCS, WAICU, EAB and Representative Nass attended. The purpose of the meeting was to update the 12 MHEC-member states about the implementation of SARA. Concerned by what the representatives from Wisconsin heard, a Wisconsin meeting convened by Representative Nass and Senator Hardorf was held on January 29, bringing together most of the Wisconsin players. As a result of that meeting, it was decided that Wisconsin would not be rushing to join SARA and it likely would be 2015 before a decision would be made.

Mr. Madelung said that Wisconsin poses a peculiar problem for SARA because there is no ideal portal for them right now. The EAB might be one but this is a problem for other the sectors. He felt there will be at least another meeting because there were a lot of questions still left on the table – costs, portals, etc.

Mr. Dies wondered whether Senator Hardorf would push for SARA; she indicated online learning is the wave of the future and she is the chair of MHEC. Mr. Madelung said on one hand she has to protect MHEC, but on the other she has to protect Wisconsin by finding the best choices for Wisconsin. He indicated he felt the debate is still open because there are still a lot of questions and input needed from various constituencies before making a final decision.

Mr. Dies said Wisconsin has been described as an outlier and, according to SARA officials, SARA was not designed for outliers. He said that a number of states like Wisconsin have been more progressive in regulating distance learning. In fact, the EAB adopted an administrative rule to address distance learning in 2004 because it recognized it was fundamentally different than on-ground delivery.

Mr. Madelung asked if the EAB is stuck between a rock and a hard place without a change to the accreditation language. Mr. Dies responded that it creates a problem but also referred back to the federal rule that is in place that says states can't give away their authority based on accreditation. Although a court order means the regulation will not be enforced with respect to online institutions, it is being enforced for on-ground institutions.

He went on to say the board was very clear when it approved the Statement of Scope that the perceived conflict between the statute and code was an unintended consequence of simply adding the definition in the administrative rules without understanding the implications potentially that there could be on the statutory provision. The EAB has proposed repealing the statutory provision as part of a clean-up.

As suggested by the Governor's Office, the EAB will be speaking with Representative Nass and members of the Legislature. Based on those discussions, a revised Statement of Scope will be submitted now that a decision about SARA is going to take some time. Because it is likely to be 2015 before a decision is made and the possibility that Wisconsin will ultimately decide it is not in the state's best interest to be a SARA-member state, the EAB should no longer suspend the approving of new out-of-state institutions offering learning programs to Wisconsin residents.

A motion (Oyama-Miller, Roden) to lift the suspension of approving of new out-of-state institutions offering learning programs to Wisconsin residents was approved unanimously.

Mr. Hein asked if the EAB still needs the rule changed in order to move forward. In response, Mr. Dies indicated that the change is only needed for those institutions that have challenged the EAB's explanation that the definition of "recognized accrediting body" in code was not meant to exempt all accredited institutions. In response to a question about changing the rule from Mr. Hein, it was noted that Mr. Dies would be meeting with Representative Nass and his chief of staff to discuss the change.

Mr. Hein asked if the schools that have been suspended need to be contacted. Mr. Dies said the EAB staff will be going back and contact the schools based on first in/first out and contact them about the approval process.

2013-15 BIENNIAL BUDGET

Mr. Dies informed board members that all state agencies will be required to submit a biennial budget request to the Department of Administration in mid-September. Although budget instructions are not available, the board should start thinking about budget items and note any specific priorities it feels the EAB should include in its request. The EAB's lack of a staff attorney is something the board may wish to consider again.

Ms. Oyama-Miller asked if EAB staff had any idea of costs to DOJ associated with providing assistance to the EAB. Specifically, would it be equal to a half-time position? Mr. Dies said he is certain it would be more than the cost of a half-time position. He also said the cost of special council for the Amerstate matter could be identified.

If the EAB had in-house counsel, that person would have performed the function that the special counsel performed. Mr. Dies said staff could take a look at items handled by DOJ, but noted that a lot of issues are handled by him. He also pointed out that every time the EAB deals with a different attorney at DOJ, there is a cost associated with them getting up-to speed since they have no previous mastery of relevant statutes, codes or federal regulations.

Ms. Oyama-Miller requested EAB staff to provide a list of issues being handled by DOJ that could be handled by in-house counsel. She also pointed out that the EAB is dependent on the schedule and priorities of DOJ when seeking assistance whereas in-house counsel would be working on EAB's schedule and priorities, thus resolving issues faster and more efficiently.

Ms. Oyama-Miller said that the request coming from the board rather than the executive secretary would make it a stronger recommendation. She noted she has seen the request for all of the years she has been on the board and would like to see it move ahead. She would like to see it as a request from the board and on the record as coming from them.

Ms. Oyama-Miller also suggested that a permanent office location be added to the list of items needed for consideration. Mr. Madelung said the board would like a list of items from staff for which the board would fight. Mr. Dies said the EAB could add the move as another item.

Mr. Roden noted that DOJ is limited to litigation and there are too many legal issues the EAB staff is dealing with on day-to-day basis. The EAB is dealing in a legal arena that needs legal support behind it. He strongly encourages in-house counsel.

STRATEGIC PLAN

Mr. Dies was asked by Mr. Madelung to provide an overview and recommendation as to how to address the strategic plan process. It was noted that information regarding the EAB's strategic plan was first shared at June 2013 board meeting since it was nearing the end of its planned existence. In response to questions at the board's December 2013 meeting, information has been prepared about the EAB's progress on achieving the goals set forth in the strategic plan.

Mr. Dies asked board members how they would like to move forward with the strategic planning process. He suggested a number of options, including the possibility of holding a separate planning session on the weekday or weekend and the hiring of an outside facilitator to lead the process.

In addition, he noted there are only four members on board at the present time. One issue to consider is whether the board should wait for new members to be appointed. Although the issue of appointments has been raised with the Governor's office, it does not appear any are imminent. Moreover, it raises fundamental questions about governance and the possibility of the EAB being restructured in some way in the future. A study examining the merger of the Department of Safety and Professional Services and the Department of Agriculture, Trade, and Consumer Protection into a new Department of Agriculture and Regulation was mentioned.

It was suggested the board may want to retain some of the current goals and objectives, while others may need to be retooled or eliminated. The board may want to conduct a SWOT exercise as part of the strategic planning process to identify the strengths, weaknesses, opportunities, and threats. SARA, for example, is just one issue the board should be thinking about.

William Roden left the meeting at 11:45 a.m.

Ms. Oyama-Miller stated she was a board member when the previous strategic plan was developed. She indicated it was difficult to plan anything when it was a larger board, and felt there was never a give and take with the board members to really come up with a plan that could be embraced. The board needs to get really engaged on the process not just for planning, but also for oversight. She also thought the board should plan for an all-day session.

Mr. Dies commented that, by design, strategic plans are considered to be fluid documents and need to adjust to various external forces. It must be viewed as a tool whose course can be changed as needed.

Mr. Madelung recommended that the board pursue this issue in a proactive way, with the forward thinking that the EAB is going to be a viable entity and that's where the EAB's strategic plan should go.

Mr. Dies asked whether or not the board would be interested in conducting an environmental scan to ascertain the perspective of other stakeholders.

Ms. Oyama-Miller said the nature of the current board members sitting down and having a full discussion on what they already know and what they can share may be best suited for the beginning stages of development. Mr. Madelung agreed that the strategic plan is not being started from scratch and could be examined for missing pieces, areas of necessary concentration, and opportunities for growth.

Mr. Dies noted that any type of meeting with the board, including strategic planning, has to be done as an open meeting. He asked board members if they had a timeline.

Mr. Madelung said he would like board members to meet to see what they have among them and get some sense of how much time and energy they would be willing to put into the development of a plan. That will better determine whether they will need an outside facilitator or need to meet all day.

Mr. Dies asked board members if they wanted EAB staff to be part of the conversation to give input or reactions to the conversation. It may be very valuable to get their perspective on issues.

Mr. Madelung indicated that he has always gotten good feedback and worked well with the staff and feels comfortable just calling and asking questions. He said the board wants to be an advocate not an adversary.

Mr. Roden reentered the meeting at 11:58 a.m.

Following a discussion regarding logistics, a decision was made to allocate time during the next board meeting to further discuss the strategic planning process.

ADJOURNMENT

A motion (Oyama-Miller, Hein) to adjourn was unanimously approved at 12:04 p.m.