#### EDUCATIONAL APPROVAL BOARD MEETING

June 16, 2016 10:30 a.m. 431 Charmany Drive Conference Room A & B Madison, WI

**Members Present**: Don Madelung, Jo Oyama-Miller, Omar Parks, William Roden

Members Absent: Robert Hein

Others Present: David Dies, Anna Fosdick, Blanca James, Sharon Johnson, Jessica Sabin,

Casey Wachniak, Educational Approval Board; Wendy Coomer, Foley & Lardner (representing Bridgepoint); Dave Healy, Madison Media Institute and Rockford Career College; Nathaniel Orpen, Rasmussen College; Tony Guajardo, Springfield College; Mel Tucker, Tucker's Truck Driving Academy; Nathan Halbach, Whyte Hirschboeck Dudek SC (representing the University of Phoenix); Lameece Tyne, Workforce Development Board of South Central (WDBSCW); Dynae Saba, WorkSmart Network

(WDBSCW); Trent Oden (via Teleconference)

The chair of the Educational Approval Board (EAB), Mr. Madelung, called the meeting to order at 10:32 a.m. Roll call was taken. A quorum was present. A motion (Oyama-Miller, Roden) to approve the meeting minutes from March 9, 2016 was unanimously approved.

#### **BOARD CHAIR'S REMARKS**

Mr. Madelung noted the board would be discussing issues ranging from the impact of federal action regarding the Accrediting Council for Independent Colleges and Schools (ACICS) to the impact of the State Authorization Reciprocity Agreement (SARA). He indicated the board would be going into close session later on in the meeting to review the performance of the EAB's executive secretary. Mr. Madelung also noted that the Complaint Review matter on the meeting agenda would be taken up first.

## COMPLAINT REVIEW, TUCKER'S TRUCK DRIVING ACADEMY

Mr. Dies indicated the EAB has been working with Tucker's Truck Driving Academy (TTDA) in response to a complaint it had received from a former student, Trent Oden, who is attending the meeting via teleconference. He noted that a resolution resolving the matter had been reached with the TTDA, which consisted of refunds to the Workforce Investment Act (WIA) and lodging costs incurred by Mr. Oden. Despite agreeing to provide the refunds, the refunds have not been made. As a result, the EAB informed TTDA of its intent to make a claim on the school's surety bond, to which the school has objected. Mr. Dies reported that the owner of TTDA, Mell Tucker, also present at board meeting, said he was not at the meeting to dispute the EAB's determination, but simply needs more time to provide the refunds. Mr. Madelung confirmed that Mr. Oden was following the discussion and understood what was happening up to this point.

Mr. Dies suggested another option, in addition to the four contained in materials provided to the board. The EAB could use the Student Protection Fund (SPF) so that the respective refunds could be made in a timely manner. TTDA would then make a payment to the EAB and the funds would be deposited back into the SPF. Mr. Dies noted that making a claim on the surety bond may have adverse fiscal consequences for TTDA.

In response to a question by Mr. Madelung asking if the EAB could still make a claim on the bond if it were to give Mr. Tucker 90 or 120 days to make payment and after that time he did not, Mr. Dies responded that it could. Mr. Madelung invited Mr. Tucker to address the board.

Mr. Tucker addressed the board and said the school has been in operation for two and a half years, and has learned a valuable lesson from this situation. He said they try to help people enhance their lives and learn the trucking industry. He has 20 years of driving experience; 18 of them with JD Hunt, and 12 of those years in the Safety Department as an instructor. They have never had a situation like this happen, but has learned from their mistakes. He said they had a similar situation arise recently, and they rejected the student immediately, which is what they should have done in this situation. He said he was not contesting the EAB's decision, but did not have the money to provide refunds.

Mr. Tucker said he appreciates the EAB and what it does. If the board acts as Mr. Dies has suggested, he could have the money within 60 to 90 days to it back. He said TTDA plans to open another location and making a claim on the bond would prevent that from happening. He thanked the board for the opportunity to speak.

Mr. Oden was asked by Mr. Madelung if he had any comments in response to Mr. Tucker's comments and indicated he did not. Mr. Madelung asked Mr. Oden if all he wanted was the refund the EAB recommended, to which he responded yes. Mr. Madelung asked Mr. Dies to summarize his recommendation to resolve the issue.

Mr. Dies suggested the EAB consider adopting a motion to use funding from the SPF to provide the respective refunds to the WIA program as well as to Mr. Oden. In addition, TTDA would be given a certain amount of time that the EAB finds reasonable to reimburse the EAB. The EAB may want to give consideration to the fact that 90 days have already passed since TTDA was directed to provide refunds. He mentioned there is an excess of \$1 million in the SPF.

Ms. Oyama-Miller asked for clarification of the final refund amount for Mr. Oden's lodging, as well as tuition. She also wanted to know if Mr. Oden and Mr. Tucker had agreed to the refund amount determined by the EAB. Finally, in regard to Mr. Tucker's statement, 'had he known certain things, he would have rejected Mr. Oden just as he rejected a different student that just recently applied,' she wanted to be clear that Mr. Tucker's actions were and are appropriate.

Mr. Dies addressed the financial issue first. He stated there is information within the meeting materials as to how Mr. Oden's refund was determined. He confirmed the refund to Mr. Oden would be in the amount of \$622.34. While Mr. Tucker initially sought to deduct the cost of transportation, that argument was rejected by the EAB. Mr. Dies referenced in the meeting materials an email exchange between Mr. Tucker and Mr. Dies about the costs of transportation being deducted, in which Mr. Tucker ultimately agreed with the refund amount. In response to a question by Mr. Madelung, Mr. Oden confirmed that he agreed with the refund amount.

In response to Ms. Oyama-Miller's second concern, Mr. Dies said that this type of situation is why the EAB exists. The EAB staff works with schools before they are approved to educate them about the requirements of running a good school. Despite the EAB's best efforts, there are times when schools run afoul of the requirements, which is why the EAB has the authority to intervene and address issues in a number of ways.

Mr. Dies said that he is encouraged by the acknowledgement of TTDA that this issue occurred, its willingness to try to find a resolution, which is what the EAB is required to do under the regulations, and is committed to preventing a similar situation from arising again. That indicates the school has learned from that situation and that the school has improved.

Mr. Madelung commented that he is more concerned about fraudulent behavior; and he does not see fraudulent behavior in this situation, just some learning curve issues. He asked Mr. Tucker if he had anything further to add. Mr. Tucker requested that once the issue with Mr. Oden is resolved, he would like for Mr. Oden to stop complaining to other agencies. Mr. Madelung stated the EAB has no control over outside agencies.

Mr. Roden suggested giving TTDA a period of 90 days to reimburse the EAB. He wanted to know if Mr. Oden would be signing something as part of the resolution. Mr. Dies noted that a student complainant is not afforded the same ability as a school to appeal an EAB decision. As such, once the EAB makes its determination, it is essentially closed.

A motion (Roden, Parks) that the EAB use its SPF to provide a refund of \$622.34 to Trent Oden and a refund of \$2,100 to the WIA program, and that TTDA be given 90 days from June 16 to reimburse the EAB was unanimously approved. Mr. Madelung informed Mr. Oden that he was welcome to stay on the line, but he chose to disconnect.

## **PUBLIC COMMENT**

Mr. Madelung invited staff and members of the public to introduce themselves. There were no comments.

#### BOARD STATUS REPORT

State Authorization Reciprocity Agreement

Mr. Dies noted that the newly created Distance Learning Authorization Board (DLAB) met for the first time in late-May. In addition to electing officers, the DLAB adopted bylaws and operating procedures. Moreover, the DLAB approved submitting a membership application to enter into the State Authorization Reciprocity Agreement (SARA). He said the EAB expects the application will be approved by the Midwest Higher Education Compact (MHEC) sometime in either July or August. Once that happens, distance learning programs will no longer be subject to EAB oversight. The EAB will be communicating with those institutions as part of the EAB's annual renewal process, which starts in July.

Ms. Oyama-Miller asked what would happen if online institutions chooses not to become a SARA participant; would they continue to be under the purview of the EAB. Mr. Dies said that

the EAB would continue to oversee distance learning institutions if they are not SARA participants, however, he does not anticipate many online institutions to out of participation. Presently, there are fewer than 10 states that are not SARA members. If an institution is in one of those states, the EAB will continue to approve that institution until such time the institution can demonstrate they are a SARA participant in that other state, which would require action by the institution and also by that home state.

Ms. Oyama-Miller mentioned that in the DLAB bylaws, all of the members of the board can assign a designee with the exception of the EAB, which is the executive secretary. She asked if there was a reason why the EAB membership does not allow for a designee. Mr. Dies responded he did not know why the language was crafted in this manner. Because the EAB would not have a DLAB representative if the executive secretary leaves the agency, Ms. Oyama-Miller said she would feel more comfortable if the language was changed to say his or her designee. Mr. Dies reminded board members that the EAB did not see proposed legislation until a week prior to the public hearing. There was not enough time or an interest by the authors to make changes. He said the EAB could request additional language to be added during the next legislative session.

Ms. Oyama-Miller also pointed out that DLAB bylaws state the chair could have the authority to amend the bylaws; and just has to get the approval of the rest of the board. Mr. Madelung suggested it could be the chair of the EAB the next designee and if the chair is not available, the vice chair.

Mr. Dies referenced 2015 Wisconsin ACT 208 in the meeting materials, which delineates the members of the DLAB. Because the bylaws are based on the language in statute, the EAB would have to have the statutory language changed if the EAB want the ability to designate someone other than the executive secretary.

Ms. Oyama-Miller said it is easier to make changes at the beginning of the process because bylaws are being created. Mr. Dies pointed out that the bylaws have been adopted. The EAB could ask that the bylaws be changed, but doing so would be inconsistent with the state statute. Mr. Madelung said that the way it is now if the president of the Technical College is not able to show up or any of the other individuals, they may not have a quorum. Mr. Dies said Ms. Foy had designated anyone other than herself; same for Rolf Wegenke at the Wisconsin Association of Independent Colleges and Universities. At the May meeting, Ray Cross was not there, and he had designated Jessica Tormey. He said he was not sure if this was a single instance or if she has been designated to act on his behalf permanently.

Mr. Madelung asked as a designee would she be able to vote. Mr. Dies respond that they can and Ms. Tormey did. Mr. Madelung said the board is asking that if the executive secretary is unable to show up, then it should be the chair of the EAB and then the vice chair. Mr. Dies said that given the informal nature of the meeting on the 26, they probably would be willing to accept someone else to attend on his behalf. He also noted that after these first few meetings, they will be meeting as little as once a year.

Two additional DLAB meetings have been set up for August and September. Mr. Dies said the way implementation is being run is for each of the sectors to review their own institutions that will apply to be SARA participants. The respective representative from those sectors will then provide a recommendation to the full board, and the full board will then act upon that. Once all

of the UW institutions are SARA participants there is not going to be a lot of work to do beyond signing up, although they will need to do renewals annually. They (DLAB) do not think it will be a great deal of work, at least not in terms of participant applications. He said time will tell regarding complaints that may be filed. He does not think there will be many because most complaints do not rise to the level of fraud or misrepresentation, which is essentially the DLAB's only authority. Other types of complaints will not be addressed.

#### Accreditation

Mr. Dies indicated he shared information about the U.S. Department of Education (USDOE) providing notice to accreditors that they are proposing a rule to standardize terminology and certain process issues about how accreditor actions are communicated to the USDOE. It also seems the USDOE is entering the arena of accountability for student outcomes; they want accreditors to do more.

Mr. Dies also provided information regarding the Accrediting Council of Independent Colleges and Schools (ACICS). In response to the collapse of Corinthian Colleges, which was accredited by ACICS, there has been a sort of backlash against ACICS. Many are concerned that ACICS was not doing their job and there have been calls by a variety of different entities to have the approval and authority of the accreditor withdrawn, including 12 state attorneys general.

In addition, the USDOE made a recommendation to the National Advisory Committee on Institutional Quality and Integrity (NACIQI), the body that approves the accreditors, that the recognition of ACICS be withdrawn. This board determines and makes recommendations back to the USDOE on whether accreditors should be authorized and whether or not the institutions that are accredited by that accreditor can receive federal financial aid.

The fallout from ACICS losing its recognition would be significant. The EAB has 16 institutions that it approves with ACICS accreditation. About a dozen would be affected, as a few are inactive or are currently teaching out students. Those of most concern to the EAB would be—Globe University, Madison Media Institute, Rockford Career College, and ITT Technical Institute.

While there have been similar situations (although on a smaller scale) where an accreditor has lost its recognition, the institutions were given 18 months to find another accreditor. It is possible that the USDOE could ultimately reject the NACIQI recommendation. At the same time, ACICS also has the ability to appeal an adverse decision. Mr. Dies noted the EAB will be closely monitoring this matter as it unfolds.

Ms. Oyama-Miller asked about how many students would be affected. Mr. Dies did not have exact numbers. He asked the Madison Media representative who responded they currently have about 228. Mr. Dies said there was more than that at Globe University, in the thousands; and believes ITT Technical Institute has about 42 online and roughly 500 students at campuses here in Wisconsin. Mr. Dies indicated that the main concern is that there is a lot of work that needs to be done to move to another accreditor; and, do these other accreditors have the capacity to absorb all of these additional institutions? Mr. Dies said ACICS presently accredits about 245 institutions with more than 800 campuses.

## IT Support

Ms. Oyama-Miller questioned why the EAB could not get IT support from the Wisconsin Technical College System given its administrative attachment to them. Mr. Dies said they had raised security concerns, but he suspects it would be an administrative burden on them noting they only have about 50 staff. The Department of Veterans Affairs (DVA) has 140 in its central office, plus hundreds of others at the nursing homes. Its IT department is significantly larger.

Mr. Dies mentioned the EAB has been working with the state's Division of Enterprise Technology (DET) and they have been helpful in getting DVA to back off terminating IT support for the EAB; perhaps until it moves in 2018. At the present time, he is concerned that the EAB may be required to be supported by DET, which might not be cost-effective. Mr. Dies said that running the EAB is like operating any small business. It requires innovation and creativity, and finding solutions that are not always in the mainstream. It needs to find ways to use its funding wisely; and that's why the EAB only pays about \$5,000 a year right now for all of its IT support. After, meeting with DET, the EAB was informed it would cost \$20,000 to \$25,000 without much value added.

### Student Outcomes Report

Mr. Madelung recognized the work of staff in creating the report on student outcomes, particularly Ms. Sabin. Mr. Madelung took the opportunity to wish Ms. Sabin well in her new endeavor. In discussing the report, he expressed concern that there are more students dropping out from institutions than graduating, which does not help the workforce. Mr. Madelung noted that one thing the report does not do is track whether or not students eventually finish somewhere else, which admittedly would be hard to do. Mr. Dies clarified that under the EAB's reporting methods, the report allows the institution to report those transfers to other institutions and it does not count them as dropouts.

Mr. Dies said that there are significant differences between the numbers of online and on ground programs. He also noted that the EAB will not have a lot of numbers for online programs next year because of SARA; and he is not sure whether or not the EAB will continue to produce the report given the limited information it will have and the EAB's limited resources. Mr. Madelung said that the trend continues to go to non-degree, certification programs, seeing a high-level of completions. With a significant number of drops, institutions will always have to look at it as an alternative.

### SCHOOL APPROVAL ISSUES

A motion (Oyama-Miller, Parks) to approve items "A" through "I" of the school activity report was unanimously approved.

#### IMPACT OF SARA

Mr. Dies reminded board members that at the last meeting, the EAB adopted a motion tabling the issue of setting a multiplier used to calculate the second payment renewal fees until its June meeting. Mr. Dies said the EAB staff had made a recommendation to use a three-prong

approach to address the impact of the revenue decline that will occur once distance learning institutions no longer subject to EAB oversight. Mr. Dies said the EAB will lose a significant amount of revenue and in order to maintain operations, it needs to decide how that will be done.

It has been recommended that the EAB take a multifaceted approach that reduces operating expenses; raises school fees (through increasing the multiplier for schools) and uses a portion of the EAB's retained earnings. If the board is in general agreement with this approach, no action is needed now because the multiplier will be set at the December meeting. However, if the board does not agree with the approach being proposed, then the board would have to figure out what kinds of staffing reductions would be necessary, and it would be better to know that now rather than in six months

Mr. Madelung commented that he thought the three-prong approach being recommended is a solid one. Ms. Oyama-Miller asked if Mr. Dies was suggesting no action was needed this approach. Mr. Dies responded that he is looking for some sense on whether or not board members concur with the suggested strategy; if so, no action is necessary at this time and it could wait until the December meeting when it sets the renewal fee multiplier.

A motion (Oyama-Miller, Roden) that the EAB address its fiscal challenges by using up to \$180,000 of retained earnings in FY 17, and consider reducing operating expenses and increasing the 2017 renewal fee multiplier that will be set at the December meeting was approved unanimously.

## 2015-17 BIENNIAL BUDGET

Mr. Madelung noted no materials were provided for this item. Mr. Dies said this item was a discussion item and shared information about what he intends to submit for the EAB's budget request. Given the current state of Wisconsin's budget, the request will be primarily a technical submission — cost-to-continue items and fringe rate adjustments. Although no formal instructions have been received from the Administration, all state agencies will be required to submit a plan reducing its budgets by 5% because of a new state law. The EAB will formally approve its budget request at the September meeting. Mr. Dies said if the board was interested in pursuing a specific initiative, it could be discussed.

## **CLOSED SESSION**

A motion (Roden, Oyama-Miller) that the EAB hold a closed session under section s.19.85(1)(c) of the Wisconsin statutes to consider the performance and compensation of the executive secretary in accordance with section 38.5(5) of the Wisconsin statues was adopted on a 4-0 roll call vote.

The board entered closed session at 11:46 a.m. A motion (Oyama-Miller, Roden) to adjourn closed session was unanimously approved at 12:28 p.m.

### RECONVENE IN OPEN SESSION

A motion (Oyama-Miller, Parks) to reconvene in open session was approved unanimously at 12:31 p.m.

# **EXECUTIVE SECRETARY PERFORMANCE AND COMPENSATION**

A motion (Oyama-Miller, Roden) that the EAB chair share and discuss the board's performance evaluation with the executive secretary and submit it to human resources director at the WTCSB was approved unanimously.

# **ADJOURNMENT**

A motion (Roden, Parks) to adjourn was unanimously approved at 12:35 p.m.