

EDUCATIONAL APPROVAL BOARD MEETING

March 7, 2017
10:30 a.m.
431 Charmany Drive
Conference Room B
Madison, WI

Members Present: Crystal Cook, Mark Kapocius, Don Madelung, Jo Oyama-Miller, Omar Parks and William Roden

Members Absent: Robert Hein

Others Present: David Dies, Derek Field, Anna Fosdick, Blanca James, Sharon Johnson and Casey Wachniak, *Educational Approval Board*; Marshall Whitlock, *Upper Iowa University*; Nathan Nathaniel R. Orpen, *Rasmussen College*; Laura Grace Peek, *American Home Inspections Training*; Jamie Beunzu, *Broadview University*; Brenda Powles, *Wisconsin Technical College System Board*; Secretary Laura Gutierrez, Deputy Secretary Eric Esser and Chief Legal Counsel Mike Berndt, *Department of Safety and Professional Services (DSPS)*; Nico Savidge, *Wisconsin State Journal*.

The chair of the Educational Approval Board (EAB), Mr. Madelung, called the meeting to order at 10:30 a.m. Roll call was taken. A quorum was present. A motion (Oyama-Miller, Cook) to approve the meeting minutes from the February 15, 2017 meeting was unanimously approved. Approval of minutes from the December 7, 2016 meeting was deferred until the next meeting.

BOARD CHAIR'S REMARKS

Mr. Madelung indicated that the public comment section would be moved up on the agenda to give schools an opportunity to address the proposed EAB elimination and transfer of functions to DSPS before the board discusses the matter. He noted the importance of the meeting given the potential impact on the EAB's future, and thanked representatives of DSPS for attending.

Mr. Madelung said this is an opportunity for DSPS representatives to convince board members that DSPS is a good fit for the EAB's functions. He noted that the EAB has existed since 1957, led by a board comprised of diversified individuals who are familiar with postsecondary education. He also explained that the EAB not only protects students, but also schools by guiding them and counseling them.

Mr. Madelung noted the ACICS loss of recognition from the USDOE and the difficulties that many schools are facing as they attempt to line up a new accreditor. He also noted that with the appointment of Betsy DeVoss as USDOE Secretary there is the possibility that for-profits may flourish again. Mr. Madelung also reflected upon M-SARA and the way it has affected the EAB and the entities with whom it works.

Mr. Madelung concluded by noting that the board desires to have a "give and take" dialogue with the DSPS representative attending today.

Ms. Oyama-Miller noted she is the longest serving continuous member of the current board. She noted the public sector cannot educate everyone and there always will be a need for private sector schools. Wisconsin has long been at the forefront of making sure its oversight of these schools is fair, equitable and good. Ms. Oyama-Miller explained that when there are major changes, it is important that the protection of students is not lost. She also reflected on the role the EAB plays in orchestrating teach-outs, and that the agency is a state and national leader when it comes to regulating the postsecondary education sector.

Ms. Oyama-Miller expressed her concerns that the core elements of the EAB be preserved in the transfer of functions and that the ability to regulate and set standards be maintained. She noted schools go through an approval process to operate in Wisconsin and the student protection fund offers another level of consumer protection. While she welcomed dialog with DSPS about the transition, she indicated wanting demonstration that current protections be preserved and the EAB's mission furthered. She concluded by stating there are better ways to transition departments together.

Ms. Cook echoed the comments of Ms. Oyama-Miller and said she believes maintaining the protection afforded to students is of the utmost importance. Regarding the transfer of functions, she believes this can be done most efficiently by retaining current staff.

Mr. Roden indicated he would like to hear from the DSPS secretary to learn if she has a plan moving forward to ensure the functions of the EAB are maintained. He stated the number one concern for him is whether the EAB will have a long or short shelf-life. In addition, he also expressed concern about maintaining consumer protection and academic rigor. Reflecting on the impact of NC-SARA, Mr. Roden noted that part of this has already been taken away, since the EAB is no longer responsible for online schools, which enroll many Wisconsin students. He concluded by noting his concern that board members do not give up too much in any transition that occurs.

PUBLIC COMMENT

Upon the call for public comment, Laura Grace Peek spoke on behalf of American Home Inspectors Training. She noted the school's approval by SAA for use of GI Bill funds, which is contingent on the school's EAB approval. She emphasized the importance in maintaining this approval moving forward.

Marshall Whitlock, Director of the Milwaukee Campus for Upper Iowa, noted his institution has a large presence in many states and has interacted with EAB staff significantly over his 11 years with the school. Reflecting upon the closures of ITT Technical Institute, Globe University, Strayer University and others, he said nine colleges have left the Milwaukee area and the EAB has been quite instrumental in making connections with other schools so students could complete their programs.

Mr. Whitlock indicated that he has worked as a legislative director in Minnesota, and with agencies in Kansas and Nebraska, which has positioned him to understand regulation well. He noted that trying to juggle efficiencies of size and complexities of many professions is something the EAB does well. Reflecting upon the functions of EAB, he noted that it is a legislative decision whether

to put the EAB elsewhere, but in so doing, it should be kept in mind that the EAB has a track record of responding so well to issues of college closures, and the EAB's contributions to students caught in those messes should not be lost in the process.

BIENNIAL BUDGET

Mr. Madelung suggested that the board start its discussion about the budget proposal to eliminate the EAB with the questions posed in the letter it sent to the Governor. Ms. Oyama-Miller stated she recognized that the Secretary of DSPS was new, but indicated she is at least aware of the board's concerns and offered to answer any questions she might have.

Secretary Gutierrez discussed her education and background, noting she has worked in public, private, and charter schools, and understands the need to offer students choices in online versus face-to-face education. She indicated having partnerships in education in many schools, and had to make sure the students served had both intellectual and social education. Secretary Gutierrez then thanked the board for their service. While passage of the budget proposal is uncertain, she indicated DSPS and EAB need to come together and figure out how can we transition and have pro-active discussions if it is ultimately adopted. She expressed a desire to make the change seamless so that students would not recognize its occurrence.

Rather than going through the EAB letter to the Governor question by question, she expressed a desire to look at the bigger issues surrounding setting up a process and how we will communicate this to stakeholders. Secretary Gutierrez spoke of DSPS' vision regarding the proposal, noting the 6.5 FTE positions that would transfer to DSPS would help to provide it expertise and facilitate the transition. She explained that DSPS has lawyers and paralegals that can help.

Secretary Gutierrez assured board members that high standards be maintained because every student, every child deserves to be educated. She offered to bring her perspective to a workgroup and help with the transition if the budget proposal passes.

Mr. Madelung explained his assumption is that the board may collectively oppose the provision at this point, if they feel that provides the best option for student protection. However, if legislation does prevail, board members will cooperate as will the staff. He pointed out if this does prevail, board members want to ensure staff are protected and noted it would be in DSPS' best interest to maintain expertise by hiring current staff.

Mr. Madelung noted there are pros and cons regarding the proposal, such as having an attorney available but the EAB is a well thought of agency with background, expertise and history that has done very well at protecting consumers. He noted Wisconsin's national reputation for consumer protection requires institutions to think hard before coming to Wisconsin, as securing approval is tough but fair.

Ms. Oyama-Miller noted the EAB's collection of student outcomes data and close examination of proprietary schools. She indicated wanting to see how these functions and duties would continue given DSPS does not have the same type of data focus.

Ms. Oyama-Miller stated there is a very clear distinction between DSPS and EAB functions. As the EAB approves nondegree to Ph.D. programs, significant review is conducted to ensure standards are met and students are protected.

Ms. Oyama-Miller inquired about DSPS' experience regulating schools since it doesn't regulate schools of the same nature and focus as the EAB.

Secretary Gutierrez responded that DSPS does not claim to be experts, but that their agency has flexibility in learning how different schools operate. Reflecting upon her personal experience, she has been through the accreditation process and given her license (MA in curriculum), she could learn how the EAB operates. She assured board members, "if EAB goes away, nothing else would."

Deputy Secretary Esser pointed out that this proposal is very different from what was proposed in the budget two years ago. He explained that DSPS recognizes the expertise of the staff at the EAB and that board members rely upon them. In addition, he noted that the increase in position authority for DSPS should provide some comfort for board members.

Deputy Secretary Esser indicated that he sees the change as a compliment; two state agencies would be joining together to ensure the EAB has more ability to protect consumers. He noted that the DSPS has 11 investigators and oversees 230 licensing groups. In his words, "We protect the public – that is what we do. It is in the title of our name."

Mr. Esser noted that the EAB in the past has relied on the Department of Justice, but DSPS has 17 lawyers and 8 paralegals to keep license holders accountable. He pointed out the agency has rule writers, public communications officers, a legislative liaison to help work with the 132 legislators, and a call center that takes complaints. It was also noted DSPS takes anonymous complaints, receives a large volume of complaints and that every complaint is taken seriously. He also noted that DSPS has financial services and a fiscal department, and that DET handles all DSPS IT functions.

In summary Deputy Secretary Esser said DSPS sees this as a compliment that can help build upon what the EAB does now. Secretary Gutierrez added to this analysis that DSPS approves instructors, and regulates schools and courses. She stated that we need to be competitive, and that we must examine how our economy is growing and what our students are seeking.

Ms. Oyama-Miller responded that DSPS' focus with proprietary schools is a very limited compared to the functions presently performed by the EAB. She noted the wide-ranging responsibilities of DSPS' agency overall and expressed concerns about the EAB's functions getting diluted. Finally, regarding recent school closures, she noted DSPS would have shift its focus to accomplish what the EAB has done for all of the recent teach-outs.

Upon inquiry from Mr. Madelung about DSPS' experience conducting a teach-out, Mr. Esser responded DSPS only has involvement with cosmetology and nursing schools. He reiterated the need for a workgroup comprised of representatives from the EAB moving forward.

Mr. Madelung, stated that he could see how a parallel workgroup could work.

Mr. Dies inquired about DSPS' vision for how it views this responsibility in the long-term and whether the EAB's functions would be housed within an existing division or attached separately to the secretary's office to ensure visibility and awareness amidst other competing demands. He pointed out that while statutes and administrative rules would still be in place, the functions would need to be re-codified to fit within a different agency structure.

Mr. Dies noted that while EAB staff have a great deal of knowledge and expertise, board members bring significant external expertise that staff do not possess. He pointed out that he has not been the president of a university or the general counsel for a technical college, but there are board members who have been in such roles. He asked how DSPS would backfill that which would be lost if the EAB is eliminated.

Mr. Dies explained that the EAB will need to decide if it supports, opposes, or stays neutral regarding the budget proposal and this information regarding DSPS's broader vision will be helpful. That said, even if the Board chooses to oppose the proposal, he indicated the EAB should be talking with DSPS.

Ms. Gutierrez responded by pointing out her educational background and the capacity of DSPS, noting nothing will be lost in moving the functions of the EAB to DSPS. She explained DSPS has the capacity to train its staff, and indicated DSPS has many efficiencies. She articulated a vision of a "one stop shop" for schools.

Mr. Madelung complimented the Governor on having appointed a Secretary with some educational background. However, he expressed concern about the timing of the proposal and the assurances staff can have about their potential transition to DSPS. In the absence of any assurances, EAB staff may seek employment elsewhere. He acknowledged it is good DSPS has the position authority to hire currently employed EAB staff; however, given that the transition is slated for January of 2018, effective dates versus transition dates will matter. He noted that regardless of today's outcome, working on a parallel process in case the proposal remains in the budget will be necessary.

Secretary Gutierrez commented that it will be a personal decision for current EAB staff regarding whether this is the right move for them. She indicated that one of DSPS' top priorities is to ensure the best candidates are in the positions so we do not lose all of the prior work of the EAB. Deputy Secretary Esser added that the future physical home of both DSPS and the EAB is the same – the new Hill Farms State Office building – which only enhances the partnership.

Upon inquiry from Mr. Kapocius about how other states handle the oversight of postsecondary education, Mr. Dies clarified that Wisconsin is unique in how it oversees postsecondary education. Most states have a postsecondary coordinating body that has oversight of all institutions – publics, technical colleges, for-profits, such as a Department of Higher Education or a Commission on Postsecondary Education. Instead, Wisconsin has a siloed governance structure and a "regulatory blind spot" in our lack of oversight of in-state nonprofit institutions.

In most instances, Mr. Dies said the function exists somewhere in the body responsible for postsecondary education. There are only one or two other states where postsecondary regulatory functions are housed in the agency responsible for licensing professions. Mr. Dies noted the EAB has raised the issue of whether it would be more appropriate for the EAB to be housed within DOJ because of its frequent contact with staff or within DATCP given its consumer protection focus.

Mr. Dies said it is important to understand that one reason the EAB has such a good reputation nationally is because it values a consumer protection role that is not solely focused on the student. The EAB believes it is also about protecting the schools and helping them avoid trouble by requiring school have certain policies and procedures. The EAB does not always prescribe those policies and procedures, it simply requires that they exist. For example, although the EAB has an attendance policy, the school sets the policy and the EAB ensures the school is following its own policy.

Ms. Oyama-Miller indicated that it is critical to see how DSPS will view its focus and mission with school oversight. She emphasized the added oversight responsibilities that would shift from the EAB to DSPS. Mr. Esser reiterated there will be 6.5 FTE dedicated positions who can talk to investigators and attorneys in person. He said that would be a compliment to carry the mission forward.

Mr. Dies asked Mr. Esser if he thought the statutes could be changed so that private schools and peddlers are not lumped together in the statutes.

Secretary Gutierrez added that it is the job of DSPS to tell an institution when it isn't meeting their expectations and standards. Working alongside the EAB in the next six months will be critical in how the missions and rules will be carried out. She highlighted DSPS' regulation of cosmetology to medical doctors as being flexible.

Mr. Madelung said he believes "if it's not broken, don't fix it." While there are opportunities of leverage, the EAB is not broken and produces GPR money that goes back to the state. Schools have indicated that they do not want their oversight to go elsewhere, recognizing the EAB to be firm, but fair. While he is keeping an open mind, he may vote to oppose the proposal because the EAB is not broken. If the proposal remains in the budget, the EAB will be in total cooperation. Mr. Esser indicated this is merely an introduction, a beginning dialog, and an invitation to begin a workgroup, which Mr. Madelung accepted.

Ms. Oyama-Miller expressed concerns that the transition will occur too abruptly. She suggests continuing to work together over a longer timeframe and work on developing new options; to determine if there are similarities, efficiencies, and transitions. For example, she suggested the EAB's administrative attachment be changed from WTCSB to DSPS. She said that changing relationships takes time and learning from each other, and welcomed the idea of starting a workgroup.

Secretary Gutierrez expressed confidence that the EAB's effectiveness would be retained in the transfer. She agreed that with the notion that if it's not broke don't fix it, stating that it would be student-centered and institution centered. The focus would be "will these efficiencies benefit our students and our intuitions?"

Mr. Parks noted that there are a lot of changes within schools that the EAB oversees, including some in teach-out mode and EDMC being sold and moving to become nonprofit. During the transition there will be a lot of students who may be effected if schools are no longer overseen. He wanted to know if DSPS would have the experience that EAB has with the variety of schools it oversees. Secretary Gutierrez responded that they have experience with housing student records and school closures, though not to this magnitude.

Mr. Roden noted the EAB's role as being more than just an oversight agency. He stated that there are too many programs in the public sector preparing students for careers that don't exist. He asked about how DSPS can ensure schools have curricula that is responsive to business, graduates find employment, and students get a rigorous education. Finally, he asked Ms. Gutierrez if she thought colleges and universities are preparing students to train for and succeed in the current economy.

Secretary Gutierrez responded that adults run the market and will go elsewhere if they are looking for something not offered. She said that DSPS needs to look at the EAB processes to ensure institutions are following through with measures. She added that because there is a big push on trades versus four year degrees, it is not DSPS' place to determine what the institutions offer but to regulate and make sure courses offered are of high rigor.

Mr. Esser noted that DSPS was not a stranger to mergers and it is a product of the Department of Commerce and the Department of Regulation and Licensing merging together.

Mr. Madelung called for a motion that the EAB either support, oppose or to remain neutral regarding the budget proposal to eliminate the agency and transfer its functions to DSPS.

A motion (Kapocius, Cook) was made that the EAB remain neutral given the access to investigators, attorneys, rule writers, and the 6.5 FTE carry-overs. Mr. Kapocius stated that he sees the proposal as more of a transfer than an elimination.

Ms. Oyama-Miller said she feels the board needs to take a stronger stance unless evidence can be seen that the EAB's concerns are addressed and the questions are answered. She did not believe that remaining neutral was strong enough because of the concerns for the EAB students.

The motion failed on 3-3 roll call vote. Those voting in favor of the motion were Cook, Kapocius and Parks. Those voting in opposition of the motion were Oyama-Miller, Madelung, Roden.

Mr. Dies suggested that since DSPS had extended an invitation to meet and the Joint Committee on Finance would be holding agency briefings the last week of March, the EAB could table making a decision until a later date via teleconference.

Mr. Madelung expressed interest in opposing the proposal to send a strong message to the Administration that board members believe in their importance and that the EAB functions well.

A motion (Madelung, Oyama-Miller) was made to oppose the Governor's recommendation to eliminate the EAB and transfer functions to DSPS, but continue to dialogue with DSPS.

Ms. Cook clarified that her vote to remain neutral because she does not feel the EAB's essential questions have been answered, which is why she welcomes the dialogue. Ms. Oyama-Miller expressed about the fiscal impact of the program and doubts claims it will lead to efficiencies or savings. Mr. Madelung said he is opposed the elimination of the EAB, but is willing to continue to a dialogue with DSPS to determine if there are efficiencies and opportunities depending upon the outcome of the Legislation.

The motion to oppose the budget proposal was adopted on 6-0 roll call vote, with all members voting in the affirmative.

The board stood informal for five minutes.

PERFORMANCE & COMPENSATION PRESENTATION

Mr. Dies introduced Brenda Powles, the Human Resources Director at the Wisconsin Technical Colleges System Board (WTCSB). She has been asked to discuss the performance evaluation process with the board given changes in the process have occurred, including a new set of forms, expectations, and criteria. Mr. Dies noted that she had also been asked to talk about the program guidelines issued by the Division of Personnel Management in DOA regarding discretionary merit, equity and retention awards.

Ms. Powles shared with board members a copy of the Position Description (PD) for the EAB executive secretary and noted it had not been updated since Mr. Dies was hired. She indicated that tasks on PD are generally used to evaluate performance. Mr. Madelung asked if it would be appropriate for Mr. Dies to update his job description. Ms. Powles responded in the affirmative and said Mr. Dies certainly knows the position best. Ms. Oyama-Miller commented that it is possible the percentages may have changed for certain responsibilities.

Mr. Dies noted that key responsibilities from his PD have been incorporated into the performance evaluation process used in the past by the board. He also noted that the board has from time to time deviated from the prescribed process and evaluated his performance on measures that did not necessarily tie directly to the PD.

Ms. Powles added that the state struggles with performance management and is still working out its performance management philosophy and system. She said that they have the technology but no clearly defined philosophy. She noted that the PD is long and the board may want to make it shorter as it will be easier to conduct performance evaluations. In addition, some of the responsibilities are outdated and reflect the timeframe when it was originally written. She suggested using bullet points. There are not a lot of rules and the narrative doesn't have to be long.

There was further discussion about how the newly developed performance evaluation form should be used. Ms. Powles added that the PD has always been tied to the evaluation process and we tell supervisors to look at the PD when evaluating performance. Mr. Madelung asked if it would be appropriate to have Mr. Dies submit an updated PD and a performance evaluation that includes a write-up of his job assessment.

Ms. Powles responded yes, adding that the process is very fluid and there is no wrong way. She said in her own performance evaluation, she writes, her supervisor adds additional items, then the two meet to discuss and finalize the evaluation. She added other supervisors complete the evaluation first, give it to the employee for edits, then they meet and finalize.

Ms. Oyama-Miller said the former numeric rating system used previously by the board was a nightmare and the key element is going beyond the narrative and looking at areas that merit

discretionary compensation. Ms. Powles responded that with merit compensation, satisfactory performance evaluation is the only criteria.

Mr. Dies asked if the use of expectations with criteria are only used for filling out the performance rating grid. Ms. Powles responded that the first section is related specifically to duties and standards that are held by everyone in the agency.

Ms. Powles explained that while there is \$6.0 million dollars in discretionary merit compensation, agencies are limited to giving awards to 15% of the total number of staff. Since that number is less than one in the EAB's case, it can only give an award to one employee. Ms. Powles said that to be eligible for DMC, employees must be in pay status and in a classified position. For satisfactory or above performance evaluations, the DMC's are given in a lump sum, not base building. The EAB will need to submit a DMC plan to DOA

Mr. Dies noted that DERA's are separate from DMC's. Ms. Powles clarified that a DERA is equity focused, base-building and used to adjust salaries because of equity issues among active staff. However, a DMC also could be used for retention. There are a variety of compensation programs but DMCs are for merit only. Retention has different programs with different rules. For example, there is a need to present an offer letter from another employer.

Mr. Madelung responded that the board would not mess with DERA. Mr. Dies suggested that his performance evaluation be delegated to the executive committee, which would make a recommendation to the full board at its June meeting. Ms. Oyama-Miller said that would be predicated on changing the PD.

A motion (Madelung, Oyama-Miller) that the executive committee be tasked with evaluating the performance of the executive secretary, including any information that other board members wish to present, and make a recommendation regarding the narrative that will be integrated into the performance evaluation form at the June meeting was unanimously adopted.

ELECTION OF OFFICERS

Mr. Madelung relinquished the chair to Ms. Oyama-Miller.

Nominations for chair were entertained. The nomination (Roden, Cook) of Mr. Madelung as chair was made and unanimously approved.

Mr. Madelung resumed the chair.

Nominations for vice-chair were entertained. The nomination (Cook, Parks) of Ms. Oyama-Miller as vice-chair was made and unanimously approved.

Mr. Madelung commented that Mr. Hein who has been secretary has not absent for quite some time nor has he been in communication. Ms. Oyama-Miller questioned if there was a Board rule on attendance. Mr. Dies noted there was none.

Nominations for secretary were entertained. The nomination (Oyama-Miller, Roden) of Ms. Cook as secretary was made and unanimously approved.

BOARD STATUS REPORT

Mr. Madelung asked board members if there were any questions related to the report. He asked about the status of the two institutions being reviewed by the EAB for SARA. Mr. Dies responded that the process was perfunctory. While institutions must be accredited by a USDOE-recognized accreditor and ACICS is no longer recognized, a determination has been made by NC-SARA that the provisional Program Participation Agreement (PPA) will allow them to still be approved. As a result, the SARA applications are likely to be approved. Mr. Madelung noted that many institutions may not find safe harbor with another accrediting body.

Mr. Dies indicated that he and Mr. Madelung would be having lunch meeting today with director of the UW's Center for the Advancement of Postsecondary Education to discuss how the for-profit sector is changing. Ms. Oyama-Miller suggested putting pressure on Congress to retain recently implemented new regulations. Mr. Madelung said it is unlikely to happen with Trump University being cut some slack and he stated that he did not think the new Administration will jump on gainful employment rules.

SCHOOL APPROVAL ISSUES

Ms. Oyama-Miller commended the EAB staff for the tremendous amount of work dealing with the closure of Globe University and arranging a teach-out, as well as the ITT closure. Mr. Dies, noted that Ms. Fosdick has been dealing with most of the ITT and Globe students (the three recent closures are all her schools), and Ms. Wachniak and Ms. Johnson have been handling all new school approvals. Ms. Oyama-Miller said that it is good news there are new schools being approved and her concerns about transferring the functions of the agency remain.

A motion (Oyama-Miller, Cook) to approval items A through I of the School Activity Report was made unanimously approved.

ADJOURNMENT

A motion (Kapocius, Parks) to adjourn was unanimously approved at 1:03 p.m.