

Date: June 13, 2013

To: Educational Approval Board

From: Charlotte Gibson
Assistant Attorney General

Subject: Issues in conducting hearings and making quasi-judicial determinations under Wis. Admin. Code § EAB 4.

I. The Board function in an administrative case

- a) Quasi-judicial
- b) Board can take testimony and may seek the assistance of an administrative law judge to conduct that function
- c) Closed session deliberation—parties are not present during the deliberation
- d) Can be a big part of a board member's service, or a not-so-big part, depending on number of cases

II. Conflicts of Interest: when a Board member cannot participate in hearing a case

- a) The Board member has a personal bias or prejudice concerning the party or the party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding
- b) The Board member knows that he or she, or a spouse, minor child or other household member, has an economic interest in the subject matter in controversy or has any other more than de minimis interest that could be substantially affected by the proceeding
- c) The Board member has made a public statement that commits, or appears to commit, the member with respect to any issue or controversy in the proceeding.

III. “Ex parte” communications: talking with one party when the other side is not present

As a Board member hearing a pending matter under Chapter 11, you may not involve yourself in the matter, even if you believe you could help resolve it. You cannot contact a school and communicate with its officials to obtain information or suggest a resolution.

IV. Who are the parties?

A person with a “substantial interest” in the issue to be decided

V. The decisionmaking process.

- a) Prior to Board meeting: read any materials provided by the parties identify the specific issues to be resolved and any factual and legal disputes.
- b) At Board meeting: if there are issues of fact that are disputed, parties may present testimony
- c) Following taking of testimony, Board goes into closed session to deliberate members’ views of the facts and law at issue
- d) Problems of hearsay
 - i) what is hearsay?
 - ii) use in administrative proceedings
 - iii) substantial evidence standard
- e) Vote. Not all Board decisions are unanimous

VI. What must the final decision include?

- a) Findings of fact and conclusions of law. Should include facts establishing the Board’s jurisdiction
- b) A statement of the disposition of the case

- c) An explanation of why the Board decided the case the way it did. The Board must demonstrate that it has “exercised its discretion.” This process depends on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.

VII. What are the losing party’s options after the final decision issues?

- a) Judicial review in circuit court
 - i) Time to appeal
 - ii) All appeals heard by a trial judge in a county circuit court
 - iii) Review is on the record—no additional gathering of evidence
 - iv) The Board’s findings and conclusions of law are typically entitled to some level of deference
- b) Appeal beyond the circuit court