State of Wisconsin / Educational Approval Board

30 West Mifflin Street
P.O. Box
Madison, Wisconsin 53708-
Phone: (608) 266-
Fax: (608) 264-
EABmail@eab.state.wi.us

Jim Doyle
Governor

David C.
Executive Secretary

ORDER OF THE EDUCATIONAL APPROVAL BOARD AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Educational Approval Board (EAB) proposes an administrative rule order to amend EAB 3.01 (6)(a), 4.04 (Title), 4.10 (2)(b), and Chapter EAB 4 (note); repeal and recreate EAB 4.06; and create EAB 4.04 (1)(cm); relating to the regulation of for-profit postsecondary schools; out-of-state, non-profit colleges and universities; and in-state, non-profit institutions incorporated after 1991.

ANALYSIS PREPARED BY THE EDUCATIONAL APPROVAL BOARD

Statutory Authority: Sections 45.54 (2), (3), (10)(c)4. and 227.11 (2), *Wisconsin Statutes*.

Statutes Interpreted: Sections 45.54(2), (3), (7) & (10), *Wisconsin Statutes*.

This rule will implement provisions related to the creation of a student protection fund. Enabling legislation was contained in the 2003-05 biennial budget (2003 Wisconsin Act 33). In addition, the rule will clarify a number of existing rule provisions.

- Clarifies that the board approves schools and their programs.

The rule updates a number of outdated references to clarify that the board approves schools and the programs they offer. Although programs are comprised of a series of courses, the board does not approve these courses individually.

- Create provisions related to implementing a student protection fund.

Under current rule, a school subject to board oversight must provide a surety bond in an amount equal to 125% of unearned tuition as a condition of obtaining and retaining approval. The bond is intended to provide indemnification to any student, parent, guardian, or sponsor suffering loss or damage as a result of any fraud or false representation used in procuring enrollment, a violation of school approval and operating requirements, or the student being unable to complete a program because the school failed to perform its contractual obligation.

The board also relies on the surety bond as a measure of a school's financial stability. When applying for a bond, a surety company evaluates a school's finances and assesses the risks for

failure. If a school is unable or has trouble securing a bond, it generally means there are underlying financial concerns which the board carefully considers during the approval process. When establishing the bond level, the board relies on information that is typically included in the school's annual financial statements. Unfortunately, this information can be 12 to 18 months old by the time it is received and analyzed. As a result, bond levels are not always sufficient to fully protect students being served and their sponsors.

For new schools, it is even more challenging to set an appropriate bond level. Because no financial history exists, the board must rely on enrollment and tuition revenue projections from the prospective school. It can be a year or more before reliable data is available to know if the bond was set at an appropriate level. In the past, there have been schools that have closed during this critical "start-up" period and students (and their sponsors) have not been fully protected by the bond.

In an attempt to better protect students, the 2003-05 state budget (2003 Wisconsin Act 33) included a provision authorizing the board to create a student protection fund. The fund would become the primary mechanism for providing protection to students in catastrophic situations in which a school closes.

This rule requires schools subject to board oversight to pay a new fee equal to $0.50 per $1,000 of adjusted gross annual school revenue (AGASR). The AGASR refers to the amount of revenue remaining after subtracting from gross annual school revenues the amount of refunds actually made to Wisconsin students or their sponsors during the same fiscal year for which the school reported the gross annual school revenues.

The fees generated will be placed into a newly created student protection appropriation. To the extent that the surety bond is unable to fully cover the losses incurred by a student or sponsor when a school closes, the board would be permitted to authorize the full or partial payment of those losses from the student protection appropriation.

Once funding in the student protection appropriation reaches $1.0 million, the fee assessment for schools will no longer be imposed, as required by state statute.

- Amend surety bond requirements as a result of creating a student protection fund.

The student protection fund will allow the board to better protect students and their sponsors in school closure situations. Under the student protection fund, the risk of any one school closing will be spread across the more than 125 schools the board approves. At the same time, the student protection fee paid will be more equitable, reflecting not only a school's level of risk but also its ability to pay the fee.

In response to creating the student protection fund, the board will modify the current requirements for surety bonds. Instead of requiring schools to obtain a bond equal to 125 percent of unearned tuition, the board will require schools to carry a fixed bond of $25,000 or 125% of unearned tuition, *whichever is less*. The rule retains current provisions that allow the board to reduce these bonds if certain criteria are met. However, the rule specifies that no bond could be less than $1,000, or an amount equal to $2,000 for each representative, if any, the school

employs. The overall impact of reducing the surety bond levels will more than offset increases from the student protection fee.

- Clarify the instructor qualifications required by the EAB.

Under current rule, a school is required to provide certain information regarding its faculty and/or instructors as a condition of board approval. This rule establishes specific criteria regarding the qualifications faculty members and/or instructors must possess.

- Clarify when newly approved schools are required to submit their 1st payment renewal fee.

The rule clarifies that a new school may defer its first payment renewal fee -- otherwise due no later than September 1st -- until March 1st of the following year.

TEXT OF RULE

SECTION 1. EAB 3.01 (6)(a) is amended to read:

EAB 3.01 (6)(a) *Interim action by executive committee of officers*. When the board is not meeting, the executive committee of officers or its duly authorized representative shall, in respect to the duties imposed on the board by these rules and s. 45.54, Stats., supervise and direct the investigation and evaluation of schools and the ~~courses~~ programs of study offered by such schools, determine whether or not such schools and such ~~courses~~ programs meet the standards and criteria established by the board, and prepare recommendations based on such investigations for consideration by the board.

SECTION 2. EAB 4.04 (Title) is amended to read:

EAB 4.04 Criteria for approval of school and ~~courses~~ programs of instruction.

SECTION 3. EAB 4.04 (1)(cm) is created to read:

EAB 4.04 (1)(cm) The school shall demonstrate that its instructors have the occupational, academic and teaching qualifications needed for the programs they teach.

SECTION 4. EAB 4.06 is repealed and recreated to read:

EAB 4.06 Financial stability and student protection. (1) SURETY BONDS.

(a) As a condition of obtaining and retaining approval, a school shall provide a surety bond on a form specified by the board. Except at provided in par. (b) and (c), the amount of surety shall be the lesser of $25,000 or 125% of unearned tuition.

(b) No surety bond may be less than $1,000 or an amount equal to $2,000 for each representative the school employs.

(c) The bonding requirements set forth in this section may be reduced upon a determination that they are excessive in relation to the risk of economic loss to which Wisconsin residents are exposed in the case of any particular school, based upon evidence of a stable fiscal history, satisfactory completion and placement rates, accreditation by a recognized accrediting body or other stability criteria the schools may offer for board review.

(d) The bond shall be executed by the school as principal and by a surety company qualified and authorized to do business in the state of Wisconsin as a surety.

(e) A surety on a bond may be released after the surety has provided written notice directed to the board at least 30 days prior to the release.

(2) STUDENT PROTECTION FEE. (a) Except as provided under par. (e), in addition to the fees under s. EAB 4.10, a school shall pay a student protection fee.

(b) The fee shall be based on a rate of $0.50 per $1,000 of adjusted gross annual school revenue as reported in accordance with ss. EAB 4.01 (4) and 4.10 (2)(d).

(c) The fee shall paid at the same time the school makes its second payment annual renewal fee as required under s. EAB 4.10 (2)(d) and is due no later than March 1 of the calendar year for which the school is applying for renewal.

(d) A school that makes the student protection fee payment required after March 1, shall pay for each month or part of a month the payment is late, a late fee of $50 or 1.5% of the student protection fee payment, whichever is greater.

(e) The board shall discontinue collecting student protection fees under this subsection during the period that the balance of the appropriation under s. 20.485 (5)(gm) exceeds $1,000,000.

(3) USE OF SURETY BONDS AND STUDENT PROTECTION FUNDING.

(a) The board may use a surety bond on which it has collected to provide indemnification to any student, parent, guardian, or sponsor suffering loss or damage as a result of the following.

1. Fraud or false representation used in procuring a student's enrollment.
2. A violation of chs. EAB 3 to 8.
3. A student being unable to complete the program or programs because the school failed to perform its contractual obligations.
4. The refusal of a school to issue a refund to which a student is entitled under ch. EAB 8.

(b) Indemnification under this section may not exceed the advanced tuition, book fees, supply fees, or equipment fees paid or liable to be paid for regardless of the number of years that a school's bond is in force. The aggregate liability of the surety bond may not exceed the penal sum of the bond. The surety bond may be continuous.

(c) To the extent that the surety bond is unable to fully cover the losses incurred by a student, parent, guardian, or sponsor when a school closes, the board may authorize the full or partial payment of those losses from the student protection appropriation under s. 20.485 (5)(gm).

(d) The board may use a surety bond on which is has collected or funds from the student protection appropriation to arrange for a teach–out of students.

SECTION 5 EAB 4 (Note) is amended to read:

EAB 4 Note: A person may obtain ~~a Single Application~~ school approval and surety bond forms by writing the Educational Approval Board at P.O. Box 8696, Madison, WI 53708-8696, ~~or~~ by telephoning (608) 266–1996, or by visiting the board's website at <http://eab.state.wi.us>.

SECTION 6 EAB 4.10 (2)(b) is amended to read:

EAB 4.10 (2)(b) A school that has not ~~done business in this state in violation of~~ violated s. 45.54 (10), Stats., prior to the effective date of approval need not pay the first payment in the calendar year in which the school paid in full the fees required by sub. (3), but may defer that payment until March 1 of the following year.

SECTION 7. INITIAL APPLICABILITY. This rule first applies to surety bonds and student protection fees that are due for calendar year 2005.

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.) Stats.

Dated at Madison, Wisconsin, March 26, 2004

STATE OF WISCONSIN
EDUCATIONAL APPROVAL BOARD

David C. Dies, Executive Secretary