

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on
Colleges and
Universities
(AC-CU)**

(Form Updated: 11/20/2008)

COMMITTEE NOTICES ...

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**INFORMATION COLLECTED BY COMMITTEE
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**



State of Wisconsin / Educational Approval Board

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Jim Doyle
Governor

David C. Dies
Executive Secretary

Date: February 23, 2004

To: Representative Mary Williams

From: David C. Dies *Dies*
Executive Secretary

Re: AB 828 - Concerns Raised by WAICU

Thank you for bringing to my attention the concerns that have been raised by the Wisconsin Association of Independent Colleges and Universities (WAICU) regarding Assembly Bill 828. At your request, I am responding to the WAICU memorandum of February 20 to you and co-sponsors of the bill asking that the bill be amended to exclude WAICU-members.

As you know, the Educational Approval Board (EAB) is an independent unit of state government responsible for protecting Wisconsin's consumers by regulating more than 122 postsecondary institutions serving more than 30,000 adults in degree and non-degree programs. The vast majority of these institutions are either for-profit postsecondary schools or out-of-state, non-profit colleges and universities. Current law specifically exempts certain schools from EAB oversight, including public institutions (i.e., UW and Technical College System schools) and private non-profit institutions that were incorporated before January 1, 1992.

AB 828 was drafted at the request of the EAB because the state does not have a policy addressing the treatment of student records when a postsecondary institution closes. The EAB recognizes the importance of protecting student records and has assumed responsibility for taking possession of student records from schools that were under the EAB's regulatory oversight at the time of closure. Although there is no specific statutory authority, the EAB acted in this manner to protect graduates and to preserve the public interest.

After reviewing the concerns raised by WAICU, the EAB does not believe an amendment, as has been suggested, is necessary for the following reasons:

- The bill is intended to allow the EAB to take possession of student records when no other alternative exists. Under the bill, the board would only intervene in situations where the records are in jeopardy of being "destroyed, secreted, mislaid, or otherwise made unavailable." Nothing in the bill will preclude WAICU from taking possession of student records should a member school close.
- The EAB consulted WAICU in the drafting of this legislation. Not only did WAICU have an opportunity to review drafts; the EAB incorporated their requested changes.

Representative Mary Williams

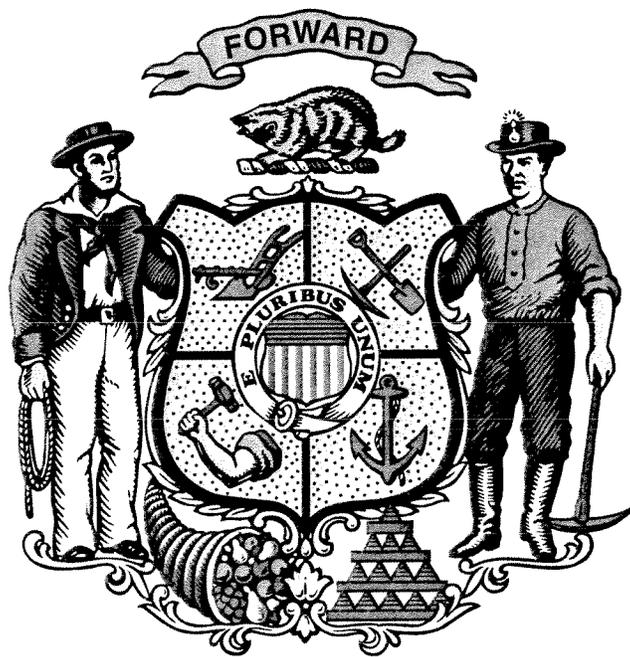
February 23, 2004

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- When Mount Senario College – a former WAICU-member school – closed in 2002 the EAB was contacted by school officials about taking the student records. Given the lack of clear statutory authority to act in this manner, the EAB attempted to get WAICU to take possession of the records. More than 12 months after the school closed, the EAB agreed to take the records (after consulting with the State Records Board and Governor's Office) when the court appointed Receiver for the school asked for our assistance.
- AB 828 was not proposed in response to the closure of Mount Senario College. The EAB was in the process of developing such a policy when Mount Senario's closure occurred. The college's closure, however, has heightened the awareness of this important issue and is a timely example of why this legislation is needed.
- Although an "agreement" has been signed by WAICU-member presidents to provide for the proper management of student records in the unlikely event of a closure, this agreement is not legally binding and could be amended or voided at any time.
- For WAICU to suggest that the bill represents an "overbroad precedent and contradicts a wealth of state statutes, administrative rules, and court precedents involving the governance of postsecondary education" is troubling. This bill will do nothing of the sort. In fact, because Wisconsin does not have a postsecondary commission or board that oversees higher education (unlike most other states), the state has no regulatory oversight of WAICU-member school governance.

I hope this information is helpful. Should you have further questions regarding this matter, please do not hesitate to contact me.

c: Governor Jim Doyle
EAB Board Members
Rolf Wegenke, WAICU



ALVERNO COLLEGE
BELOIT COLLEGE
CARDINAL STRITCH UNIVERSITY
CARROLL COLLEGE
CARTHAGE COLLEGE
CONCORDIA UNIVERSITY
EDGEWOOD COLLEGE
LAKELAND COLLEGE
LAWRENCE UNIVERSITY
MARIAN COLLEGE



WISCONSIN ASSOCIATION OF INDEPENDENT
COLLEGES AND UNIVERSITIES

MARQUETTE UNIVERSITY
MILWAUKEE INSTITUTE OF ART & DESIGN
MILWAUKEE SCHOOL OF ENGINEERING
MOUNT MARY COLLEGE
NORTHLAND COLLEGE
RIPON COLLEGE
ST. NORBERT COLLEGE
SILVER LAKE COLLEGE
VITERBO UNIVERSITY
WISCONSIN LUTHERAN COLLEGE

ASSEMBLY COMMITTEE ON COLLEGES AND UNIVERSITIES

TESTIMONY

by

Dr. Rolf Wegenke, President

Wisconsin Association of Independent
Colleges and Universities

on

ASSEMBLY BILL 828

February 24, 2004

Representative Kreibich, members of the committee, my name is Rolf Wegenke. I am president of the Wisconsin Association of Independent Colleges and Universities (WAICU), representing the 20 private, or independent, colleges of Wisconsin and their 55,000 students. I am here to testify today for information on Assembly Bill 828.

I appreciate the importance of protecting student records for the benefit of the students and share the concerns of the Educational Approval Board and the sponsors of Assembly Bill 828.

I am concerned, however, that AB 828 extends the reach of the EAB over non-profit private colleges and universities in a manner that establishes an overbroad precedent and contradicts state statutes, administrative rules, and court precedents involving the governance of postsecondary education in Wisconsin. I appreciate the sponsors' and committee members' willingness to consider an amendment that will protect the independence of private higher education in Wisconsin while granting appropriate authority to the Educational Approval Board to protect student records.

Granting the EAB regulatory authority over schools "not regulated" by the EAB violates the plain language of the EAB statutes, and is open-ended and overbroad. The EAB statutory authority in Chapter 45 specifically excludes from EAB regulation in-state schools that are exempt from taxation under section 501 of the Internal Revenue Code and that either were incorporated in this state prior to January 1, 1992, or had their administrative headquarters and principal places of business in this state prior to 1970. I was personally involved in the development of this statutory language which was crafted to exempt WAICU-member schools from regulation by the Educational Approval Board.

WAICU is recognized in state statutes as the official voice of private higher education in Wisconsin: in Chapter 14 (as a member of the College Savings Program Board or EdVest); Chapter 15 (DPI's Professional Standards Council); Chapter 560 (Wisconsin Technology Council board); and in Ch. 39 (Higher Educational Aids Board, annual Wisconsin Tuition Grant recommendation).

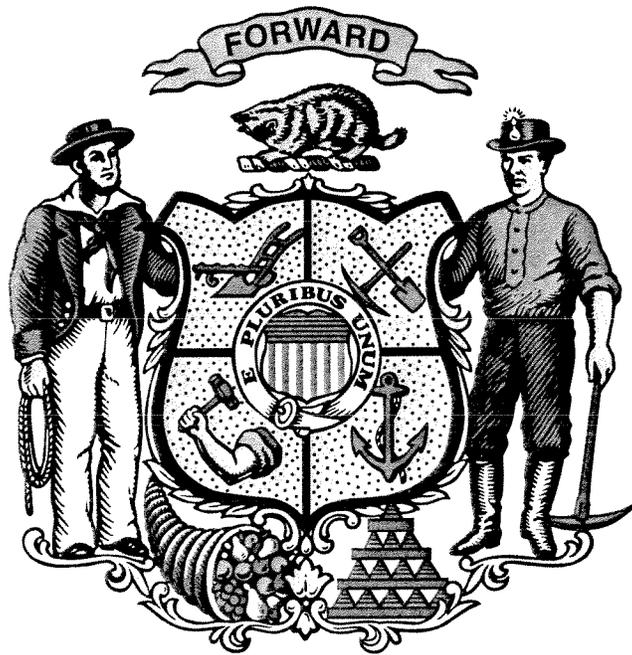
The extension of EAB authority to private colleges and universities that are members of WAICU is unnecessary and duplicative. In October of 2003, each president of a WAICU-member college or university unanimously approved a resolution to allow WAICU to provide for the proper management of a WAICU member's student records in the unlikely event of a closure. Yesterday we informed Representative Williams' office, and I am here today to say that WAICU, as confirmation that we have the mechanisms in place to protect student records, has offered to assume custody of the Mount Senario College student records from the Educational Approval Board.

To protect student records where necessary, while exempting WAICU-member schools as envisioned by the original EAB enabling legislation, I hope you will consider amending the bill as follows:

On page 3 of the bill, amend lines 7 and 8 to read as follows: 1. Notwithstanding sub. (1) (e), "school" has the meaning given in sub. (1) (e) (intro.) and also includes a school described in sub. (1) (e) 1., 6., 7., or 8, except that a school described in sub. (1) (e) 1. that is a member of the Wisconsin Association of Independent Colleges and Universities shall not be considered a "school" under this subsection.

State statutes and this legislation exempt the UW and the Wisconsin Technical College System from EAB oversight. Given the steps the UW, WTCS, and now WAICU have taken, the amendment will avoid the imposition of an unnecessary and duplicative expansion of government regulation. With this amendment, the legislation can and should go forward to grant EAB the authority it needs to carry out its responsibilities.

I would be happy to answer any questions.





STATE OF WISCONSIN EDUCATIONAL APPROVAL BOARD

ASSEMBLY BILL 828 STUDENT RECORDS RETENTION

SUMMARY

The Educational Approval Board (EAB) has proposed a student records retention policy for postsecondary institutions that close. Currently, state law does not address the treatment of student records in these situations.

BACKGROUND

During the past five (5) years, hundreds of postsecondary institutions across the county have closed. Among this number are at least 31 traditional colleges, roughly half of them being four-year undergraduate institutions. Meanwhile, there have been at least 11 major college mergers and acquisitions and countless others among proprietary institutions, a trend which is expected to continue for the next decade. In fact, some analysts at Standard & Poors, a national bond-rating agency, have forecast that colleges and universities might be forced to consolidate in large numbers, or close, as they struggle against stagnant levels of financial resources and substantially higher levels of debt.

In the state of Wisconsin, there have been 16 known postsecondary school closings during the past 10 years. A majority of these closures have been concentrated in the IT sector and have occurred in the past three years during the extended market downturn. Included on the list, however, are more prominent traditional institutions like Mount Senario College (Ladysmith) and Madison Business College.

While nearly 80 percent of states have some type of records retention policy for postsecondary schools that close, Wisconsin is among the 20 percent of states that have no such policy. This may be attributed to the fact the state lacks a postsecondary governing body that coordinates issues among the various sectors. Whatever the reason, the lack of such a policy places student transcripts at-risk of being lost or even destroyed.

EAB Authority

The Educational Approval Board is an independent unit of state government responsible for protecting Wisconsin's consumers by regulating and monitoring more than 120 institutions serving more than 30,000 adults in degree and non-degree programs. The vast majority of these institutions are either for-profit postsecondary schools or out-of-state, non-profit colleges and universities. Current law specifically exempts certain schools from EAB oversight, including public institutions (i.e., UW and Technical College System schools) and private non-profit institutions that were incorporated before January 1, 1992.

Current Practice

The EAB recognizes the importance of protecting student records and has assumed responsibility for taking possession of student records from schools that were under the EAB's regulatory oversight at the time of closure. Although the EAB has not been granted specific statutory authority to act in this manner, it has done so to protect graduates and to preserve public interest.

Closed schools for which the EAB currently maintains student records are listed below.

- ACME Institute of Technology
- Business and Banking Institute
- Career Academy
- Career Tech Corporation
- Control Data Institute (later known as Technology Institute of Milwaukee)
- OnIT Consulting
- Sawyer College of Business
- Technology Institute of Milwaukee (formerly known as Control Data Institute)
- United Technical Institute (a division of Career Academy)

Until recently, the EAB was not concerned about student records for schools not subject to its regulatory authority. While the EAB lacked clear authority to take possession of student records from schools that were under its oversight, it has virtually no jurisdiction over schools exempt from its regulations.

The closure of Mount Senario College in 2002, however, caused the EAB board to change its perspective. Because the college was a non-profit institution formed in 1962, it was not subject to EAB oversight. College officials initially approached the EAB shortly after it closed about becoming the custodian of their records. Absent any oversight responsibilities for the school, however, the EAB declined.

School personnel and the attorney appointed by the court as Receiver worked for over a year with the North Central Association of Colleges and Schools – the college's regional accrediting body – to find another accredited institution or suitable other alternative custodian to take the records. Unfortunately, no other institution or organization offered to assume responsibility for the student transcripts. With those records at risk of being lost or destroyed, the EAB agreed more than a year later to assume responsibility for the student records.

Other Cases

The situation involving Mount Senario College is not unique. The same was true for student records of Milton College that closed in the 1970s. Some of those records are maintained by UW-Whitewater; others were transferred to Mount Senario and are now in EAB possession. Another example is Madison Business College (MBC) that closed in 1998. Also a school that was exempt from EAB approval, MBC student records are kept at a nursing home in Verona.

A review of the closed schools in the state of Wisconsin shows the disjointed nature where student records are held. Unfortunately, in some instances student records have been lost or destroyed. It is estimated that the records for 14 closed schools that are not subject to EAB oversight are being held by various entities.

ASSEMBLY BILL 828

To better protect Wisconsin residents, the EAB has proposed a formal retention policy for student records from postsecondary schools that close.

Scope

Because the University of Wisconsin System and the Wisconsin Technical College System are publicly controlled, they would be exempt from the provisions of the bill. In the unlikely event a decision is made to close one of these institutions, internal systems would be capable of addressing the retention of student records. All other postsecondary schools operating in the state -- regardless of whether or not they require EAB approval -- would be addressed under the legislation.

Expanding EAB Authority

The EAB would be granted legal authority to take possession of student records from any school if it determines that student records are in jeopardy of being destroyed, secreted, mislaid, or otherwise made unavailable. In addition to closed schools, this provision would apply to schools where the closing is imminent as deemed by the EAB. The EAB is also seeking language that would allow it to seek a court order to take possession of student records. In precipitous school closures, it may not be possible to secure student records before the "doors are locked" and the EAB would need to have a court order to gain access.

For schools subject to EAB oversight, a student record would be defined as a transcript for a student or former student of a school showing the name of the student, the title of the program in which the student was or is enrolled, the total number of credits or hours of instruction completed by the student, the dates of enrollment, the grade for each course, lesson, or unit of instruction completed by the student, the student's cumulative grade for the program, and an explanation of the school's credit and grading system. This definition parallels an existing definition under EAB 7.03.

Schools that are not subject to EAB oversight, a student record would be defined as a transcript for a student or former student of the school showing such information about the academic work completed by the student or former student as is customarily maintained by the school.

Finally, the proposal would specify that student records held by the Educational Approval Board may only be disclosed in a manner that is consistent with 20 USC 1232g and 34 CFR Part 99, the federal family educational rights and privacy act (FERPA), and are therefore not subject to the Open Records Law.

Appropriation / Funding Issues

Under the bill, a "user" fee would be charged to persons requesting a student record. This fee would cover the administrative costs associated with this function. A continuing program revenue appropriation would be created in which fees would be deposited. In addition, the EAB proposes that the student protection appropriation under s.20.485 (5)(gm) be amended so that it can be used to cover the costs associated with the retention of student records **from closed schools that were subject to EAB approval.**