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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-135

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### 1. Statutory Authority

a. Section EAB 4.01 (4m) provides in part that if a school fails to comply with agency rules, the Educational Approval Board may impose a fine on the school, not to exceed \$500 per day. This is clearly a reference to s. 45.54 (10) (e), Stats., providing that any person who violates sub. (10) (a) may be required to forfeit not more than \$500 and providing that each day of operation in violation of sub. (10) (a) constitutes a separate offense. However, it is not clear that the board has the authority to impose the forfeiture. Rather, it appears that a court has this authority through the enforcement of the statutes by the Attorney General or a district attorney under s. 45.54 (10) (d), Stats. If the board believes that the authority exists for it to impose a \$500 per day fine, it should explain the source of this authority.

b. The agency should cite specific statutory authority for the provision in s. EAB 4.01 (7) that permits an appeal of the Educational Approval Board’s decision to an administrative law judge.

c. Section 45.54 (10) (c), Stats., provides that the board must promulgate rules to establish fees and that the fees, among other things, must be sufficient to cover all costs that the board incurs in examining and approving proprietary schools. Further, the board must give consideration to establishing a variable fee structure based on the size of a proprietary school. Section EAB 4.10 (2) (g) provides that the board may waive a fee if the fee is less than \$50. The analysis to the rule states that the authority to waive an annual renewal fee is a cost efficiency measure. It could be argued that if the fees are meant to cover all costs of the board in

examining and approving proprietary schools, and if a fee of less than \$50 is not cost efficient, then perhaps the fee should be raised rather than waived. The board should explain why, in essence, it is proposing that fee-paying schools absorb the cost of fee waivers to smaller enterprises.

## **2. Form, Style and Placement in Administrative Code**

a. The note preceding ch. EAB 1, relating to definitions should be incorporated into the text of the rule.

b. In s. EAB 1.01 (19m), citations to the United States Code should be included.

c. In s. EAB 3.02 (5), the phrase “in these rules of procedure” should be amended to read: “in this section.”

d. In s. EAB 3.03, the notations “(1)” and “(a)” are unnecessary since the section is not divided into subunits. [See also ss. EAB 7.05 and 11.02.] Also, the first occurrence of the notation “ch.” Should be replaced by the notation “s.” Finally, the reference “ch. EAB 4 through 11” should be replaced by the reference “chs. EAB 4 to 11.” The latter style of cross-reference should be used throughout the rule.

e. In s. EAB 4.01 (2m) (a), each occurrence of the notation “ch.” should be replaced by the notation “s. EAB.”

f. In s. EAB 4.01 (4m), the subunits should be renumbered as pars. (a) to (c).

g. In s. EAB 4.01 (5) (a) and (b), the reference to “rules” should be replaced by appropriate numerical cross-references.

h. Also, in s. EAB 4.08 (2) (b) 2., the notation “ch” should be replaced by the notation “s. EAB.” [See also s. EAB 4.10 (1) (e).]

i. The punctuation in s. EAB 4.08 (2) (b) detracts from the clarity of the provision. The agency may wish to eliminate the semi-colons at the end of the clauses to improve clarity.

j. In s. EAB 8.05, the notation “s. EAB” should be inserted after the word “under.”

k. In s. EAB 8.07 (2m), the word “must” should be replaced by the word “shall.”

l. A title to ch. EAB 11 should be created in the rule.

m. In s. EAB 11.03, the introductory material should be unnumbered and the paragraphs should be renumbered as subs. (1) to (10). In newly renumbered s. EAB 11.03 (10), the word “program(s)” should be replaced by the word “programs.” [ss. 227.27 (1) and 990.001 (1), Stats.]

n. In ss. EAB 11.04 and 11.05, the notation “s.” should be inserted before each occurrence of the notation “EAB.” Also, in s. EAB 11.05 (1), the hyphen should be replaced by the word “to.” Finally, in s. EAB 11.05 (2), the reference “par. 1” should be replaced by a reference to “sub. (1).”

o. The reference to the “state records board” in s. EAB 7.05 (1) should be changed to “public records board.”

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. EAB 4.05 (5) (b), the phrase “inspection by EAB staff” is amended by striking the phrase “by EAB staff.” Why is this phrase stricken? Who else will be allowed to reasonably inspect a school?

b. In s. EAB 4.01 (5m) (a), the word “in” should be replaced by the word “on.”

c. In s. EAB 4.01 (6) (a), the amended phrase “within 10 days of receiving notice” should be rewritten to read “within 10 days after receiving notice.”

d. Section EAB 4.01 (6) (c) should include a phrase such as “except as provided under as sub. (5m) (b).”

e. In s. EAB 4.01 (7), the phrase “within 10 days of the effective date” should be rewritten to read “within 10 days after the effective date.”

f. The repeal of s. EAB 4.04 (8) relating to distance education also eliminates a requirement relating to “periodic student-to-faculty interaction.” Is this intended to eliminate a requirement for any interaction, or only personal interaction where student and faculty are in the same location? This may need to be clarified in other definitions.

g. In s. EAB 4.06 (1), the last occurrence of the word “of” should be replaced by the phrase “in an amount of.” In sub. (3), the second occurrence of the phrase “as a result of the” is not necessary and should be deleted.

h. In s. EAB 4.06 (3), the proposed change from “course or courses” to “program or programs” leaves unclear how “course or courses” will be treated under the provision.

i. The term “constructive notice” is used in ss. EAB 8.07 (2m) and (3). The clarity of the rule could be improved if a definition of the term were included in the rule.

j. The definition of “distance learning program” in s. EAB 11.02 is unclear and should be redrafted to clarify its intended meaning.

k. In s. EAB 11.03, the introductory material should be rewritten to read: “A private, postsecondary school delivering distance learning programs shall meet the following standards:”.

l. In s. EAB 11.04 (1), the phrase “make an application” could be more concisely changed to “apply.”

m. The agency may wish to specify an initial applicability date to clarify which applications and programs will be subject to the revised regulations.