Technical College System of Georgia (TCSG) Kathy May: Received below Memo as an attachment in an email from Sandra Kinney Research Manager, TCSG on 06/01/2011 at 11:03 a.m.

State of Wisconsin / Educational Approval Board

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Scott Walker
Governor

David C. Dies
Executive Secretary

MEMORANDUM

Date: May 17, 2011

To: Institutions Inquiring about Authorization of Online Programs in Wisconsin

From: David C. Dies, DCD Executive Secretary

Re: Regulatory Requirements Applicable to Public Institutions

The Educational Approval Board (EAB) appreciates your institution making inquiry about the requirements for offering distance learning programs to Wisconsin residents.

Under s.38.50 (1)(e) 2., Wis. Stats., "[s]chools that are supported mainly by taxes" are exempt from EAB oversight. Because the exemption is not restricted to public institutions governed by the state of Wisconsin, the EAB has consistently interpreted it to mean any public college or university that is an instrumentality of a state is exempt. Because your institution meets this criterion, it is deemed to be exempt from EAB oversight.

Should your institution offer programs in a regulated profession, such as nursing, counseling or teacher training, you are advised to contact those respective oversight bodies (e.g., the Department of Regulation and Licensing or the Department of Public Instruction) about requirements specific to those programs.

Technical College System of Georgia (TCSG) Kathy May: Links to oversight bodies referenced above in memo.

State of Wisconsin Department of Regulation and Licensing

State of Wisconsin Department of Public Instruction

subsection for reasons of safety, convenience or insufficient interest in a given neighborhood.

(5) Meals may be served at schools where they are served to students or at any site more convenient to the majority of authorized elderly persons interested in the service. Food may be transported to authorized elderly persons who are unable to leave their homes or distributed to nonprofit organizations for such purposes. However, no state funds under this section may be used for food delivery to individual homes. The board may require consolidation of programs between districts and between schools if such a procedure will be convenient and economical.

(6) The district board may file a claim with the department of public instruction for reimbursement for reasonable expenses incurred, excluding capital equipment costs, but not to exceed 15% of the cost of the meal or 50 cents per meal, whichever is less. Any cost in excess of the lesser amount may be charged to participants. If the department of public instruction approves the claim, it shall certify that payment is due and the secretary of administration shall pay the claim from the appropriation under s. 20.255 (2) (cn).

(7) All meals served must meet the approval of the board, which shall establish minimum nutritional standards and reasonable expenditure limits consistent with the standards and limits established by the state superintendent of public instruction under s. 115.345 (6). The board shall give special consideration to the dietary problems of elderly persons in formulating a nutritional plan. However, no district board may be required to provide special foods for individual persons with allergies or medical disorders.

(8) Participants in a program under this section may be required to document their Wisconsin residency in a manner approved by the board. The board may issue identification cards to such persons if necessary. A district board may admit nonresidents who would otherwise qualify into its program, but no state funds under this section may be used to subsidize any portion of the meals served to such persons.

(9) The board shall adopt reasonable rules necessary to implement this section.

History: 1989 a. 269, 359; 1993 a. 399; 1995 a. 27 ss. 1814, 9145 (1); 1997 a. 27; 2003 a. 33.

38.38 Services for handicapped students. Annually the board shall award a grant to each district board, from the appropriation under s. 20.292 (1) (de), to assist in funding transitional services for handicapped students. Each district board shall receive an amount equal to one−sixteenth of the amount appropriated and shall contribute matching funds equal to 25% of the amount awarded.

History: 1991 a. 39; 1997 a. 27.

38.40 Technical preparation, school−to−work, and work−based learning programs. (1) EMPLOYMENT AND EDUCATION PROGRAM ADMINISTRATION. The board shall plan, coordinate, administer, and implement the technical preparation, school−to−work, and work−based learning programs under sub. (1m) and such other employment and education programs as the governor may by executive order assign to the board. Notwithstanding any limitations placed on the use of state employment and education funds under this section or under an executive order assigning an employment and education program to the board, the board may issue a general or special order waiving any of those limitations on finding that the waiver will promote the coordination of employment and education services.

(1m) TECHNICAL PREPARATION, SCHOOL−TO−WORK AND WORK−BASED LEARNING PROGRAMS. The board shall provide all of the following programs:

(a) A technical preparation program that includes the technical preparation programs under s. 118.34.

(b) A school−to−work program that includes the school−to−work program for children at risk under sub. (4m).

(c) A work−based learning program under which the board awards grants to tribal colleges that are recognized as land grant colleges under 7 USC 301 to fund programs that provide occupational training and work−based learning experiences to youths and adults.

(2) INTERAGENCY ASSISTANCE. The council on workforce investment established under 29 USC 2821 and the department of public instruction shall assist the board in providing the technical preparation, school−to−work, and work−based learning programs under sub. (1m).

(2m) SKILL STANDARDS. The board shall approve statewide skill standards for the school−to−work program under sub. (1m) (b).

(4m) SCHOOL−TO−WORK FOR CHILDREN−AT−RISK. (a) The board may approve an innovative school−to−work program provided by a nonprofit organization for children at risk, as defined in s. 118.153 (1) (a), in a county having a population of 500,000 or more to assist those children at risk in acquiring employability skills and occupational−specific competencies before leaving high school. If the board approves a program under this paragraph, the board may award a grant, from the appropriation under s. 20.292 (1) (ef), to the nonprofit organization providing the program and the nonprofit organization shall use the funds received under the grant to provide the program.

(b) The board shall establish requirements for the operation of the grant program under this subsection. Notwithstanding sub. (5), those requirements are not required to be promulgated as rules.

(4r) PUBLICATIONS AND SEMINARS. The board may provide publications and seminars relating to the employment and education programs administered by the board and may establish a schedule of fees for those publications and seminars. Fees established under this subsection for publications and seminars provided by the board may not exceed the actual cost incurred in providing those publications and seminars. The fees collected under this subsection shall be credited to the appropriation account under s. 20.292 (1) (ga).

(5) RULES. The board shall promulgate rules to implement this section.

History: 2003 a. 33 ss. 946d to 946m, 1868p, 1868r, 1876t; 2005 a. 25 ss. 714d to 719d, 1835m.

38.41 Training program. (1) The board may award a grant to a district board for skills training or other education related to the needs of business.

(2) The board may award a grant to a district board to provide skills training or other education to a business if the business is located in this state and the applicant submits to the board an affidavit stating that the business has no more than 100 employees or had no more than $10,000,000 in gross annual income in its most recent fiscal year.

(3) (a) The board shall award grants under this section from the appropriation under s. 20.292 (1) (eh).

(c) The board may award no more than $500,000 in any fiscal year under sub. (2).

(d) Beginning in the 2008−09 school year, the board shall award at least $1,000,000 annually under sub. (1) for training in advanced manufacturing skills, and beginning in the 2010−11 school year, the board shall award at least $2,000,000 annually under sub. (1) for such training.

(4) The board shall promulgate rules to implement and administer this section.

History: 2005 a. 25; 2007 a. 20; 2009 a. 2, 28, 265.
Cross−reference: See also ch. TCS 17, Wis. adm. code.

38.50 Educational approval board. (1) DEFINITIONS. In this section, unless the context clearly requires otherwise:

(a) Notwithstanding s. 38.01 (2), "board" means the educational approval board.

(b) "Course" means an organized unit of subject matter in which instruction is offered within a given period of time or that covers a specified amount of related subject matter.

(c) "Course of instruction" means a series of classroom or correspondence courses having a unified purpose which lead to a diploma or degree or to an occupational or vocational objective.

(d) "Person" means any individual, partnership, association, corporation, or limited liability company, or any combination of these.

(e) "School" means any private trade, correspondence, business, or technical school, but does not include any of the following:

1. 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.

2. Schools that are supported mainly by taxes.

3. Schools of a parochial or denominational character offering courses having a sectarian objective.

4. Schools primarily offering instruction avocational or recreational in nature and not leading to a vocational objective.

5. Courses conducted by employers exclusively for their employees.

6. Schools, courses of instruction, and training programs that are approved or licensed and supervised by other state agencies and boards.

7. Schools approved by the department of public instruction for the training of teachers.

8. Schools accredited by accrediting agencies recognized by the board.

(f) "Solicitor" means a person employed by or representing a school located either within or outside this state that, in places other than the actual business premises of the school, personally attempts to secure the enrollment of a student in the school.

(g) "Teaching location" means the area and facilities designated for use by a school required to be approved by the board under this section.

(2) RESPONSIBILITIES. The board shall protect the general public by inspecting and approving private trade, correspondence, business, and technical schools doing business within this state, whether located within or outside this state, changes of ownership or control of the schools, teaching locations used by the schools, and courses of instruction offered by the schools and regulate the soliciting of students for correspondence or classroom courses and courses of instruction offered by the schools.

(3) RULE−MAKING POWER. The board shall promulgate rules and establish standards necessary to administer this section.

(5) EMPLOYEES, QUARTERS. The board shall employ a person to perform the duties of an executive secretary and any other persons under the classified service that may be necessary to carry out the board's responsibilities. The person performing the duties of the executive secretary shall be in charge of the administrative functions of the board. The board shall, to the maximum extent practicable, keep its office with the technical college system board.

(7) APPROVAL OF SCHOOLS GENERALLY. To protect students, prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction, and encourage schools to maintain courses and courses of instruction consistent in quality, content, and length with generally accepted educational standards, the board shall do all of the following:

(a) Investigate the adequacy of courses and courses of instruction offered by schools to residents of this state and establish minimum standards for those courses of instruction.

(b) Investigate the adequacy of schools' facilities, equipment, instructional materials, and instructional programs and establish minimum standards for those facilities, equipment, materials, and programs.

(c) Establish rules, standards, and criteria to prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction.

(d) Promulgate rules restricting the negotiability of promissory instruments received by schools in payment of tuition and other charges.

(e) Establish minimum standards for refund of the unused portion of tuition, fees, and other charges if a student does not enter a course or course of instruction or withdraws or is discontinued from the course.

(f) Require schools offering courses and courses of instruction to residents of this state to furnish information concerning their facilities, curricula, instructors, enrollment policies, tuition and other charges and fees, refund policies, and policies concerning negotiability of promissory instruments received in payment of tuition and other charges.

(g) Approve courses of instruction, schools, changes of ownership or control of schools, and teaching locations meeting the requirements and standards established by the board and complying with rules promulgated by the board; publish a list of the schools and courses of instruction approved and a list of the schools that are authorized to use the term "college," "university," "state," or "Wisconsin" in their names; and make those lists of the schools available on the board's Internet site.

(h) Issue permits to solicitors when all board requirements have been met.

(i) Require schools to furnish a surety bond in an amount as provided by rule of the board.

(8) SOLICITING OF STUDENTS. (a) *In general.* No solicitor representing any school offering any course or course of instruction shall sell any course or course of instruction or solicit students for a course or course of instruction in this state for a consideration or remuneration, except upon the actual business premises of the school, unless the solicitor first secures a solicitor's permit from the board. If the solicitor represents more than one school, a separate permit shall be obtained for each school the solicitor represents.

(b) *Solicitor's permit.* The application for a solicitor's permit shall be made on a form furnished by the board and shall be accompanied by a fee and a surety bond acceptable to the board in the sum of $2,000. The board shall, by rule, specify the amount of the fee for a solicitor's permit. The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as the result of any fraud or misrepresentation used in procuring his or her enrollment or as a result of the failure of the school to perform faithfully the agreement the solicitor made with the student, and may be supplied by the solicitor or by the school itself either as a blanket bond covering each of its solicitors in the amount of $2,000 or the surety bond under sub. (7) (i). Upon approval of a permit, the board shall issue an identification card to the solicitor giving his or her name and address, the name and address of the employing school, and certifying that the person whose name appears on the card is authorized to solicit students for the school. A permit shall be valid for one year from the date issued. Liability under this paragraph of the surety on the bond for each solicitor covered by the bond shall not exceed the sum of $2,000 as an aggregate for any and all students for all breaches of the conditions of the bond. The surety of a bond may cancel the bond upon giving 30 days' notice in writing to the board and shall be relieved of liability under this paragraph upon giving the notice for any breach of condition occurring after the effective date of the cancellation. An application for renewal shall be accompanied by a fee, a surety bond acceptable to the board in the sum of $2,000 if a continuous bond has not been furnished, and such information as the board requests of the applicant. The board shall, by rule, specify the amount of the fee for renewal of a solicitor's permit.

(c) *Refusal or revocation of permit.* The board may refuse to issue or renew, or may revoke, any solicitor's permit upon one or any combination of the following grounds:

1. Willful violation of this subsection or any rule promulgated by the board under this section.

2. Furnishing false, misleading, or incomplete information to the board.

3. Presenting information to prospective students relating to the school, a course, or a course of instruction that is false, fraudulent, or misleading.

4. Refusal by the school to be represented to allow reasonable inspection or to supply information after written request therefor by the board.

5. Failure of the school which the solicitor represents to meet requirements and standards established by and to comply with rules promulgated by the board under sub. (7).

6. Cancellation of the solicitor's bond by surety.

7. Subject to ss. 111.321, 111.322, and 111.335, the applicant has an arrest or conviction record.

(d) *Notice of refusal to issue or renew permit.* Notice of refusal to issue or renew a permit or of the revocation of a permit shall be sent by registered mail to the last address of the applicant or permit holder shown in the records of the board. Revocation of a permit shall be effective 10 days after the notice of revocation has been mailed to the permit holder.

(e) *Request for appearance.* Within 20 days of the receipt of notice of the board's refusal to issue or renew a permit or of the revocation of a permit, the applicant or holder of the permit may request permission to appear before the board in person, with or without counsel, to present reasons why the permit should be issued, renewed, or reinstated. Upon receipt of a request, the board shall grant a hearing to the applicant or holder of the permit within 30 days giving that person at least 10 days' notice of the date, time, and place.

(f) *Recovery by students.* The bond in force under par. (b) shall not limit or impair any right of recovery otherwise available under law, nor shall the amount of the bond be relevant in determining the amount of damages or other relief to which any plaintiff may be entitled.

(g) *Recovery on contracts.* No recovery shall be had by any school or its assignee on any contract for or in connection with a course or course of instruction if the representative who sold or solicited the course was not the holder of a solicitor's permit under this subsection at the time of the sale or solicitation.

(h) *Enforcement.* The attorney general or any district attorney may bring an action in circuit court for the enforcement of this subsection.

(i) *Penalty.* Whoever violates this subsection may be fined not more than $500 or imprisoned not more than 3 months or both.

(10) PROPRIETARY SCHOOL APPROVAL. (a) *Authority.* All proprietary schools shall be examined and approved by the board before operating in this state. Approval shall be granted to schools meeting the criteria established by the board for a period not to exceed one year. No school may advertise in this state unless approved by the board. All approved schools shall submit quarterly reports, including information on enrollment, number of teachers and their qualifications, course offerings, number of graduates, number of graduates successfully employed, and such other information as the board considers necessary. If a school closure results in losses to students, parents, or sponsors, the board may authorize the full or partial payment of those losses from the appropriation under s. 20.292 (2) (gm).

(b) *Application.* Application for initial approval of a school or a course of instruction, approval of a teaching location, change of ownership, or control of a school, renewal of approval of a school or reinstatement of approval of a school or course of instruction that has been revoked shall be made on a form furnished by the board and shall be accompanied by a fee set by the board under par. (c) and any other information as the board considers necessary to evaluate the school in carrying out the purpose of this section.

(c) *Fees; rule making.* The board shall promulgate rules to establish the fees paid to the board. In promulgating rules to establish the fees, the board shall do all of the following:

1. Require that the amount of fees collected under this paragraph be sufficient to cover all costs that the board incurs in examining and approving proprietary schools under this subsection.

2. Give consideration to establishing a variable fee structure based on the size of a proprietary school.

3. Specify a fee to accompany all applications under par. (b).

4. Specify a student protection fee.

(cm) *Limit on student protection fee.* The board shall discontinue collecting annual student protection fees under par. (c) 4. during the period that the balance in the fund created by those fees exceeds $1,000,000.

(d) *Enforcement.* The attorney general or any district attorney may bring an action in circuit court for the enforcement of this subsection, including bringing an action to restrain by temporary or permanent injunction any violation of par. (a).

(e) *Penalties.* Any person who violates par. (a) may be required to forfeit not more than $500. Each day of operation in violation of par. (a) constitutes a separate offense.

(f) *Other remedies.* In addition to any other remedies provided by law, a student who attends a school that is in violation of par. (a) may bring a civil action to recover fees paid to the school in violation of par. (a) together with costs and disbursements, including reasonable attorney fees.

(11) CLOSED SCHOOLS; PRESERVATION OF RECORDS. (a) In this subsection:

1. "Association" means the Wisconsin Association of Independent Colleges and Universities or a successor organization.

2. 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.

3. "Student record" means, in the case of a school, as defined in sub. (1) (e) (intro.), 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. In the case of a school described in sub. (1) (e) 1., 6., 7., or 8., "student record" means 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.

(b) 1. If a school operating in this state discontinues its operations, proposes to discontinue its operations, or is in imminent danger of discontinuing its operations as determined by the board, if the student records of the school are not taken into possession under subd. 2., and if the board determines that the student records of the school are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the persons who are the subjects of those student records or the authorized representatives of those persons, the board may take possession of those student records.

2. If a school operating in this state that is a member of the association discontinues its operations, proposes to discontinue its operations, or is in imminent danger of discontinuing its operations as determined by the association and if the association determines that the student records of the school are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the persons who are the subjects of those student records or the authorized representatives of those persons, the association shall take possession of those student records.

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(c) If necessary to protect student records from being destroyed, secreted, mislaid, or otherwise made unavailable to the persons who are the subjects of those student records or the authorized representatives of those persons, the board or association may seek a court order authorizing the board or association to take possession of those student records.

(d) The board or association shall preserve a student record that comes into the possession of the board or association under par. (b) 1. or 2. and shall keep the student record confidential as provided under 20 USC 1232g and 34 CFR part 99. A student record in the possession of the board is not open to public inspection or copying under s. 19.35 (1). Upon request of the person who is the subject of a student record or an authorized representative of that person, the board or association shall provide a copy of the student record to the requester. The board or association may charge a fee for providing a copy of a student record. The fee shall be based on the administrative cost of taking possession of, preserving, and providing the copy of the student record. All fees collected by the board under this paragraph shall be credited to the appropriation account under s. 20.292 (2) (i).

(12) USE OF CERTAIN TERMS PROHIBITED. (a) No person that holds itself out to the public in any way as a legitimate institution of higher education may use the term "college" or "university" in the person's name unless the person provides an educational program for which the person awards an associate or higher degree and the person has accreditation recognized by the U.S. secretary of education, has the foreign equivalent of that accreditation, as determined by the board, or has accreditation recognized by the Council for Higher Education Accreditation. This paragraph does not apply to any of the following:

1. A school that was doing business in this state with the approval of the board prior to May 27, 2010.

2. A person described in sub. (1) (e) 3. to 7. that was doing business in this state prior to May 27, 2010.

(b) No school, including a school described in sub. (1) (e) 1. to 8., may use the term "state" or "Wisconsin" in its name if the use of that term operates to mislead the public into believing that the school is affiliated with the University of Wisconsin System or the technical college system, unless the school actually is so affiliated. This paragraph does not apply to a school described in sub. (1) (e) 1. that has accreditation recognized by the U.S. secretary of education, has the foreign equivalent of that accreditation, as determined by the board, or has accreditation recognized by the Council for Higher Education Accreditation.

(c) The attorney general or any district attorney may bring an action in circuit court for the enforcement of this subsection, including bringing an action to restrain by temporary or permanent injunction any violation of par. (a) or (b).

(d) Any person who violates par. (a) or (b) may be required to forfeit not more than $500. Each day of operation in violation of par. (a) or (b) constitutes a separate offense.

(e) In addition to any other remedies provided by law, a student who attends a school that is in violation of par. (a) or (b) may bring a civil action to recover fees paid to the school, together with costs and disbursements, including reasonable attorney fees.

(13) FALSE ACADEMIC CREDENTIALS. (a) In this subsection:

1. "Academic credential" means a degree, transcript, certificate, or other similar document that indicates the completion of a program, course, or course of instruction leading to, or the earning of academic credit toward, the granting of an associate, baccalaureate, or graduate degree.

2. "Authorized institution of higher education" means an educational institution that meets any of the following requirements:

a. Has accreditation recognized by the U.S. secretary of education; has the foreign equivalent of that accreditation, as determined by the board; or has accreditation recognized by the Council for Higher Education Accreditation.

b. Is approved by the board to operate in this state.

c. Operates in this state and is a school described in sub. (1) (e) 1. to 8.

d. Does not operate in this state, but is licensed or otherwise approved by the appropriate state agency of another state and is an active applicant for accreditation by an accrediting body recognized by the U.S. secretary of education or by the Council for Higher Education Accreditation.

e. Has been found by the board to meet standards of academic quality comparable to those of an educational institution located in the United States that has accreditation recognized by the U.S. secretary of education or by the Council for Higher Education Accreditation to offer credentials of the type and level claimed.

3. "False academic credential" means an academic credential issued or manufactured by a person that is not an authorized institution of higher education.

4. "Legitimate academic credential" means an academic credential issued by an authorized institution of higher education.

(b) Any person who knowingly issues or manufactures a false academic credential is guilty of a Class A misdemeanor.

(c) Any person who knowingly uses a false academic credential, or who falsely claims to have a legitimate academic credential, as follows may be required to forfeit not more than $1,000:

1. In any communication to a client or to the general public, in connection with any business, trade, profession, or occupation.

2. For the purpose of obtaining a license or other approval required to practice a trade, profession, or occupation.

3. For the purpose of obtaining admission to an authorized institution of higher education.

4. For the purpose of obtaining an employment position with a state agency or with a political subdivision of the state, including an elective or appointive position, whether compensated or not; of obtaining a promotion, transfer, or reassignment from such a position; or of obtaining an increase in compensation or benefits for such a position.

(d) The board may charge a fee for evaluating an educational institution under par. (a) 2. e. in an amount that is sufficient to cover all costs that the board incurs in evaluating the institution. All fees collected by the board under this paragraph shall be credited to the appropriation account under s. 20.292 (2) (g).

History: 2005 a. 25 ss. 725g, 735c to 735x; Stats. 2005 s. 38.50; 2009 a. 300.

Cross−reference: See also EAB, Wis. adm. code.

A Wisconsin corporation offering programs that lead to certification for teachers and other school personnel was not subject to regulation as a trade or technical school. Norda, Inc. v. Wisconsin Educational Approval Board, 2006 WI App 125, 294 Wis. 2d 686, 718 N.W.2d 236, 05−2335.

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