MINUTES - MEETING OF THE
STATE BOARD OF CAREER EDUCATION
9:30 a.m.

April 5, 2012

The State Board of Career Education (SBCE) was called to order by Chairman Phil Taylor. The meeting was held at Arkansas Rehabilitation Services, 525 W. Capitol Avenue, Little Rock, Arkansas.

A record of member attendance is as follows:

PRESENT

Mr. Phil Taylor, Chairman
Mr. John Riggs, Vice Chairman
Mr. Richard Smith
Mrs. Lucy Ralston
Mrs. Martha Dixon
Mr. John Yates

Ex-Officio Nonvoting Members
Mr. William L. "Bill" Walker, Jr., Ex-Officio Secretary

ABSENT

Dr. Thomas Flowers

Ex-Officio Nonvoting Members

Dr. Tom Kimbrell
Mr. Shane Broadway

Mr. Bill Walker introduced Mr. Brandon Robinson, legal counsel from the Office of the Arkansas Attorney General. He also introduced Ms. Lorna Claudio, the new chief finance officer for the Department of Career Education, and Dr. Robert Gunter, the new deputy director for career and technical education.

Mr. Carl Daugherty, chief of field services, introduced two of his district managers, Mr. Everett Adamson and Ms. Lisa Murphy.

A. ACTION ITEM – APPROVAL OF MINUTES OF FEBRUARY 2, 2012

On a motion by Mr. Riggs and second by Mr. Smith, the State Board of Career Education unanimously approved the minutes of February 2, 2012.

B. INFORMATIONAL ITEM – UPDATE ON PROPOSED POLICIES AND PROCEDURES WAIVER PROCESS

Mr. Walker stated that in the legislative session, special language was passed prohibiting the enforcement of the "60-40" rule for secondary area center funding adopted by the board. The board had also taken action to create a waiver provision that would allow the agency, on a case-by-case basis, to grant a waiver of the 60-40 rule in certain cases. The public notice for the new policies and procedures relating to funding was put on hold effective as of the date of the law prohibiting enforcement of the 60-40 rule.

The special language prohibiting the enforcement of the 60-40 will expire June 30, 2013. If there is no further action in the legislative session, the current rule minus the waiver provision would automatically become effective at that time. The waiver provision would not become effective because the agency halted action on it when the special language was adopted, and it was not fully implemented. The agency halted action on the waiver

provision upon advice from the attorney general's office not to go forward with the waiver provision. Mr. Robinson is at the board meeting to answer questions in regard to this issue.

Mr. Walker stated what he had hoped would happen was that once the funding cycle began, centers would be able to determine if they should apply for a waiver. However, barring legislative action, the current rule minus the waiver provision would go into effect, and there would not be sufficient time then to put the waiver provision into effect so that centers could take advantage of it.

Mr. Riggs stated he did not understand why the waiver provision could not go through the rules and regulation process at this time.

Mr. Robinson asked Mr. Riggs to state his question again. Mr. Riggs asked why the waiver provision could not be implemented. Mr. Robinson stated that the attorney general's office had advised against it, as did the Bureau of Legislative Affairs, based upon current law that secondary technical center aid shall be calculated and distributed by the Department of Career Education based upon each secondary technical center's eligible student full-time equivalent count. This law, which was part of an appropriations bill, is the current law, so no rule that would go against this law could be adopted until after June 30, 2013. Mr. Riggs stated that he understood but wanted to know why the rule could not be implemented and then not used until after June 30, 2013. Mr. Robinson stated that an effective date could be placed on a rule but that there is no way of knowing what might happen during the next legislative session. Mr. Riggs stated putting an effective date on the rule would mean that a waiver provision would then be in place if and when the special language expires on June 30, 2013.

Mr. Walker stated that he had previously had the same concern and question but was advised by the attorney general's office that technically the rule that the waiver provision would be attached to does not exist.

Mr. Yates stated that the 60-40 rule is still on the books but cannot be implemented. Mr. Robinson stated that the rule is not on the books because it was trumped by the law. Therefore, until that law expires, there is no rule, meaning that the rule cannot be waived since it technically does not exist. On June 30, 2013, if there is no legislative action, the rule will revert to the one currently on the books.

Mr. Yates stated that the new rule could not be executed or enforced until June 30, 2013, but after that time, if nothing else changes, it could be enforced. Mr. Robinson stated that as the law is written, the current rule would automatically go into effect July 1, 2013. Mr. Yates inquired as to the administrative rules status of the waiver, which the board voted on at the previous meeting. Mr. Walker stated that the agency was asked not to go forward with the waiver provision because of the special language.

Mr. Walker stated that his concern is that we still will not have the waiver provision in place once it reverts to the current rule and that the programs will not have time enough in that funding cycle to have the benefit of the waiver provision.

Mr. Riggs asked if it is possible to pass a rule that does not take effect until after the current law expires. Mr. Robinson stated that technically there is no rule in place and that a rule that is counter to the law cannot be adopted. He said that his advice is to wait until the session since there will still be a period of time to begin the rule-making process. Mr. Robinson stated that the board could adopt a rule that would become effective July 1, 2013, if and when the law is allowed to expire, and no other another law is put in place. However, he said, the attorney general's office advises against the board taking this action.

Mr. Riggs asked Mr. Robinson if it is his opinion that the board would not need to take any action to reverse what was voted on previously. Mr. Robinson replied that the board would not need to take any action regarding the rule, since the rule technically does not exist since it was trumped by the law.

Mr. Walker inquired about the action the board had previously taken to move forward on the waiver. Mr. Robinson stated he was speaking in reference to the 60-40 rule and that it was his understanding that the waiver provision never was implemented. Mr. Walker stated he understands that it was never implemented but that the board directed him as director to move forward with the rules process on the waiver provision. He asked if the board needs to take some action to officially recognize that in light of the law, the agency was unable to move forward with the waiver process. Mr. Riggs stated he thought the board would need to take some action since it had directed Mr. Walker to do something that may have been illegal.

Mr. Yates stated that the board approved the waiver on February 2 and that the special language was enacted on February 28. Mr. Riggs stated the effective date of the special language would be July 1, 2013, and that the board could thus direct the agency to go through the process of moving the waiver provision through the rules process. Mr. Walker stated the board had already directed the agency to go through the rules process on the waiver provision but that the process was put on hold.

Mr. Riggs stated if the rule is ready to go on July 1, 2013, there would be some leeway for discussions during the legislative session with any opponents of special language.

On a motion by Mr. Riggs to suspend the rules in order to take up an action item, second by Mrs. Dixon, the State Board of Career Education unanimously approved to suspend the rules.

On a motion by Mr. Riggs to have the director proceed with the rule-making process on adding the waiver provision to the 60-40 rule, seconded by Mr. Yates, the State Board of Career Education unanimously approved to have the director proceed with the rule-making process on adding the waiver provision to the 60-40 rule.

Mr. Walker stated that he wanted to brief the board on adult education issues and concerns. He provided the board members with copies of letters sent to the agency. He told the board that it had approved several items relating to adult education, one being the funding formula. He stated that the agency is now in the fifth year of phasing in the funding formula that was redesigned more than five years ago. The funding formula was phased in, beginning with a 60-40 split and a 10 percent cap and subsequently, a 70-30 split. The agency is now proposing to move to an 80-20 split with no cap as approved by the board at its February 2, 2012, board meeting. The formula was phased in gradually to protect programs by giving them a reasonable transition period before full implementation of the formula, including elimination of the cap. The formula is performance-driven.

Mr. Walker stated that the second item approved by the board was a set of minimum standards that every adult education local education agency (LEA) would have to meet in order to be an LEA. The cost of those standards is estimated at $477,000, and calculations indicated that this cost would be devastating to smaller programs in terms of them serving as administrative entity.

Mr. Walker stated that four options were shared with Governor Beebe for a redesign of adult education that would allow for a continuation of services and implementation of the new standards, both of which have to be accomplished with the limited resources adult education has had for the past 21 years. Governor Beebe stated he would like for the agency to share that information with the Joint Education Committee before taking any

action. Agency staff presented to the Joint Education Committee on March 12, 2012, and were asked to return the following Monday for another meeting.

Mr. Walker stated that adult education administrators have expressed concerns that they have not been informed what their funding will be. Funding notifications had been delayed until agency staff was able to meet with the Joint Education Committee about the possible funding options. Mr. Walker stated that he met with the Adult Education Administrators Advisory Council last week in Jonesboro, and administrators restated their position that they needed to know when the decision on funding would be made. That decision had to be put on hold a second time, stated Mr. Walker, because of the request to reappear at the Joint Education Committee. Mr. Walker stated that administrators had initially approved the 80-20 split with no cap but have since sent another letter stating they recommend an 80-20 split with a 10 percent cap. Mr. Walker added that administrators also clarified to him that they have been discussing the minimum standards, but have not yet approved them, so his previous statement to the board that administrators had approved the standards was made in error.

Mr. Walker stated that the agency needs to give some notice to the LEAs regarding which formula will be used to determine funding. The options are (1) to maintain the current formula, which is a 70-30 split with a 10 percent cap, (2) go to the 80-20 split with no cap, as has been authorized by the board, or (3) consider the recommendation of the adult education administrators for an 80-20 split with a 10 percent cap.

Mr. Riggs stated that the way he reads the motion is that the board directed Mr. Walker to implement the 80-20 split with no cap and that he does not think the board gave him any option to do otherwise.

Mr. Riggs asked Mr. Robinson if he had this information in front of him, and Mr. Robinson stated that he did not have it, but that if the board gave direction, then there would be no leniency.

Mr. Robinson stated that he hated to digress and asked if he could bring some information to the board's attention concerning the 60-40 rule relating to the secondary career center funding issue. He stated that he had further reviewed the law and found that it did have an emergency clause that made it effective immediately upon passage.

Mr. Walker asked if the board could rescind the previous motion to proceed with the rule-making process to add the waiver provision to the 60-40 rule in light of the finding of the emergency clause in the law.

<u>On a motion by Mr. Riggs to suspend the rules, second by Mr. Yates, the State Board of Career Education unanimously approved to suspend the rules.</u>

<u>On a motion by Mr. Riggs to rescind having the director proceed with the rule-making process on adding the waiver provision to the 60-40 rule, seconded by Mr. Yates, the State Board of Career Education unanimously approved to rescind having the director proceed with the rule-making process on adding the waiver provision to the 60-40 rule.</u>

Upon returning to the discussion about the adult education funding issue, Mr. Riggs stated he believed that Mr. Walker felt he had discretion on the funding issue but that his understanding was that the board had directed Mr. Walker to implement the funding formula. Mr. Robinson stated as he reads the motion, there is no discretionary language.

Mr. Walker stated that there needed to be a clarification that a ceiling of $950,000 would not be exceeded.

Mr. Jim Smith, deputy director of adult education, provided the board members with further information on how this funding formula would affect all the LEAs.

Mr. Yates asked if the agency had a sense as to what extent those programs that would experience a loss would be disrupted with an elimination of the cap.

Mr. Walker stated there would be problems because some areas would not be able to perform. He added that what the agency is trying to do is to encourage programs to move in the direction of consolidating administrative entities.

Mr. Walker stated the issue will probably have to be forced, as it should be. It is hoped that programs will consolidate voluntarily, but if there is a program that is not taken in by another program, the agency needs to have a plan in place to deal with that issue.

Mr. Walker stated that Representative Stephanie Flowers sent a letter is requesting that the adult education program LEA currently at Watson Chapel be moved to Southeast Arkansas College (SEARK). The LEA had been at Southeast Arkansas College in the past. The president at that time asked that the adult education program be moved off campus, and it was relocated to the University of Arkansas at Pine Bluff (UAPB), where it is currently.

It is probable that because of a number of audit issues, the LEA will have to be moved from Watson Chapel, Mr. Walker said.

Mr. Walker explained that Jefferson County has 11,092 eligibles and that under any plan currently being proposed, only one LEA would be recommended because only one is needed to serve that number. Secondly, agency auditors have discovered a number of financial issues at Watson Chapel. It is the agency's understanding that Watson Chapel personnel responsible for the audit issues would be moved to SEARK, thus creating a danger that the same audit problems would recur, he said.

Mr. Walker stated that Watson Chapel has notified the agency of its intention to cease adult education operations as of July 1, 2012. Since the Watson Chapel program currently serves Jefferson, Dallas and Cleveland counties, the agency will have to determine how to continue services to these counties. Mr. Walker said that a tentative plan is for Jefferson County to be served by UAPB on an interim basis and for Dallas and Cleveland counties to be served on an interim basis and probably a permanent basis by Southern Arkansas University-Tech (SAU-Tech). SAU-Tech is interested in assuming responsibility for the program, and if SAU-Tech becomes the LEA, one administrative entity will be eliminated automatically.

Mr. Walker stated that the option to do nothing is not a feasible one, because adult education has reached a critical point and that in order to serve the best interests of students, changes must be made. He said that now is the time to force the issue and make the best use of limited resources.

Mr. Yates asked what the confusion was with the administrative procedures act, why Representative Flowers says the funding formula should have gone through the rule-making process, and why the agency thinks it should not. Mr. Walker stated he did not understand her position and will share her letter with Mr. Robinson. Mr. Walker said that Representative Flowers is saying that any changes to the funding formula need to go through the rules process. However, the funding formula has been changed in the past without going through the rule-making process, he said.

Mr. Walker stated that currently the law directs the agency to determine funding. Based on that law, the funding formula was changed upon the recommendation of a task force, but

the new formula did not go through the rules process. When the agency has made any changes to the formula, those changes have not gone through the rule-making process.

Mr. Riggs asked Mr. Walker whether the board needs to take any action, and if so, to recap what actions the board should take. Mr. Walker stated that, according to what the board just clarified, the 80-20 funding formula with no cap will be implemented.

Mr. Robinson recommended that while he researches whether this change needs to go through the rule-making process, the agency should begin the public comment period so that by the next board meeting, the public comment period will have already taken place. Mr. Robinson stated he is fairly confident that the rule-making process is required.

DIRECTOR'S REPORT

Director Walker informed the board members that a very productive meeting was held with staff at the Arkansas Career Training Institute (ACTI). Staff expressed concerns that the center was going to be closed, and those concerns were addressed in the meeting. The meeting was facilitated by Governor Beebe.

Director Walker informed the board members that progress is being made toward acquiring the armory across the street from ACTI.

Mr. Jonathan Bibb, ACTI administrator, updated the board on ACTI's transition from the current hospital model to a clinic model.

Mr. Walker informed the board that the most recent ACE Expo in Jonesboro had an attendance of 624.

Mr. Walker stated that board members have expressed interest in attending board meetings by conference call if they cannot attend in person. Mr. Robinson stated that meetings by conference call are permissible but advised that there should be some members physically present instead of all members calling in by telephone.

Mr. Walker announced the following dates:

SMT Retreat – May 1-4, 2012 – Rogers, Arkansas
Next board meeting— June 7, 2012

ADJOURNMENT

Mr. Taylor adjourned the meeting at 11:34 a.m.

William L. "Bill" Walker, Jr., Ex-Officio Secretary
State Board of Career Education

Phil Taylor, Chairman
State Board of Career Education