



Tab 1

Mineral Area College-Southeast Missouri State University Dispute Resolution

Coordinating Board for Higher Education
April 19, 2022

BACKGROUND

Mineral Area College requested CBHE approval to offer 46 academic programs at the Cape College Center in Cape Girardeau on February 28, 2022. The programs are listed in Tab III of the binder. They include 46 separate credentials including:

- **An Associate of Arts (AA) degree.** The AA degree is generally a two-year degree that includes completion of lower division general education requirements. It is a transfer degree that generally allows a student who earns it to enroll in a four-year institution and begin work toward a baccalaureate degree as a junior. MAC is not currently approved to offer the AA in Cape.
- **17 Associate of Applied Science (AAS) degrees.** AAS degrees are associate degrees in professional, technical, or terminal programs.

MAC's proposals include nine AAS degrees that have already been approved by the CBHE for delivery in Cape, including automotive collision technology; automotive technology; construction/building technology; design and wood manufacturing; digital media technology; graphic arts/printing technology; heating, air conditioning, and refrigeration; physical therapy assistant; and welding technology.

MAC's proposals include eight proposals to offer AAS degrees that have not yet been approved for delivery in Cape: Business and technology; child development; computer networking technology; criminal justice; electrical/electronics technology; engineering technology; industrial maintenance; and machine tool technology.

- **An Associate of Arts in Teaching (AAT) degree.** The AAT is generally considered a transfer degree for students who want to transfer to earn a bachelor's degree in teacher education. MAC is not currently authorized to offer the AAT in Cape.
- **An Associate of General Studies (AGS) degree.** The AGS is generally considered a terminal associate degree. It does not represent a specific course of study. MAC is not currently authorized to offer the AGS in Cape.
- **3 Associate of Science (AS) degrees.** AS degrees prepare students to work in specific science-related fields or transfer to earn Bachelor of Science degrees. MAC's proposals include two AS degrees they are already approved to offer in Cape (respiratory therapy and electrical technology) and one they are not currently approved to offer in Cape (nursing).
- **23 certificate programs.** Certificate programs generally require less hours to complete than associate degrees and are tied to specific occupations.

MAC's proposals include seven certificate programs that are already approved for delivery in Cape: Automotive collision technology; automotive technology; construction/building technology; electrical technology; graphic arts/printing technology; heating, air conditioning, and refrigeration; and welding.

MAC's proposals include 16 proposals for certificates they are not currently approved to offer in Cape, including business and commerce general, child care, child development, computer networking technology, criminal justice, digital media technology, electrical/electronics technology, EMT, engineering technology-design drafting, engineering technology-manufacturing, industrial maintenance, logistics technician, machine tool technology, nurse assistant, practical nursing, and production technician.

Department staff posted MAC's proposals for public comment on March 1, 2022, and received a total of 142 responses, 141 in support of the proposals and one against. The comment against was submitted by Southeast Missouri State University on March 18, 2022. The complete correspondence is in the Public Comment tab of the dispute resolution binder, Attachment A. It lists concerns including:

- MAC is actually proposing to establish a residence center and they have not submitted the information required by the administrative rule that governs that review.
- MAC's proposal is not supported by clear and convincing need, as evidenced, in part, by the 2021 community college feasibility study and DHEWD staff conclusions based on that study.
- MAC has not operated in good faith as required by CBHE policy.
- MAC's proposal is not consistent with CBHE policy, specifically the Public Policy Guidelines on Lower Division Coursework....
- MAC's individual program proposals are not supported by evidence of need and would unnecessarily duplicate programs already being delivered by SEMO.
- MAC cannot unilaterally dissolve the Cape College Center agreement.
- MAC's proposal is misleading and not clear.

MAC responded to SEMO's public comment on March 21, 2022. The complete correspondence is in the Public Comments tab of the dispute resolution binder, Attachment B. MAC's response included:

- Response to claim that MAC has not operated in good faith.
- Data from the 2021 feasibility study MAC argues supports their proposals.
- Descriptions of how MAC meets the criteria required for residence center proposals.
- Data MAC argues demonstrates clear and convincing need.
- An argument on why the CBHE Public Policy Guidelines on Lower Division Coursework... do not apply.
- Response to the claim of unnecessary duplication.
- Explanation of the dissolution of the Cape College Center agreement.
- Answers to other questions raised in SEMO's letter (enrollment, business plan, financial viability, etc.).

CURRENT STATUS

After extensive research and review, the commissioner concluded the following, which she communicated to MAC and SEMO on April 1, 2022. The commissioner's correspondence is in the Attempts at Resolution and Correspondence tab of the dispute resolution binder, Attachment F.

Lower Division Coursework

MAC is already approved to offer 18 programs in Cape. They can continue to offer those programs without additional action by the department or the Coordinating Board for Higher Education. However, SEMO asserts that Mineral Area does not have authority to offer general education, which could include portions of the already-approved CTE programs. That assertion is based on the CBHE's [Public Policy Guidelines on Lower Division](#)

[Coursework...](#). The full text of the policy is in the Reference tab of the dispute resolution binder, Attachment D. The policy provides:

Public two-year institutions proposing to provide lower division certificates or associate degrees outside a taxing district are expected to work collaboratively with public four-year institutions by building on currently available general education and occupation-related coursework, and by utilizing the human resources and facilities of public four-year institutions. Public four-year institutions, as well as other education providers, are expected to collaborate in good faith with the proposing public two-year institution.

In the current situation, this policy has resulted in an impasse. MAC and SEMO have engaged in conversations through which they attempted to reach an agreement on the delivery of lower division coursework but have not been able to agree on terms.

On the other hand, the department's regulations on [Submission of ... New Programs](#) and [Establishment of New ... Instructional Sites](#) could potentially allow a community college to offer programs, including lower division coursework, at a location outside its taxing district without "building on currently available general education and occupation-related coursework" or "utilizing the human resources and facilities of public four-year institutions" as stated in the policy. The department's general counsel has determined that where a policy and a rule conflict or produce a different result, the department must apply the rule. Both administrative rules are in the Reference tab of the dispute resolution binder, Attachments C and E.

The decision not to apply the policy is a significant one, and it should be discussed in detail, with an opportunity for CBHE review during which the parties may present to the board.

Appropriate Review

There is also a question of whether MAC's proposals, which include a potential significant expansion of career and technical education programs at the certificate and associate degree levels as well as associate degrees of arts, general studies, and teaching, should be evaluated through the department's academic program approval process or through the process to approve a change in the scope of a residence center. Even if routine review is the appropriate level of review, the [administrative rule](#) that governs academic program approval says that the commissioner will recommend approval "once all concerns are resolved." The administrative rule is in the Reference tab of the dispute resolution binder, Attachment C. Although the commissioner does not interpret that requirement to mean that all parties must be in complete agreement before she recommends approval of a proposal evaluated through routine review, the significance of the issues that are disputed in this instance led her to the conclusion that all concerns have not been resolved and that she is not, therefore, prepared to recommend approval at this time. This, too, is a matter best discussed in a context that includes an opportunity for CBHE review during which the parties may present to the board.

Dispute Resolution

Section 173.125, RSMo, requires public colleges and universities to submit to a dispute resolution process as a condition of receiving state funds. The statute is in the Reference tab of the dispute resolution binder, Attachment A. The CBHE [Policy on Dispute Resolution](#) allows the dispute resolution process to be initiated by an institution, the commissioner, or the CBHE. The policy is in the Reference tab of the dispute resolution binder, Attachment B.

The commissioner sent the parties additional correspondence on April 1, 2022. Her letter is in the Attempts at Dispute Resolution and Correspondence tab of the dispute resolution binder, Attachment H. The letter notified the parties that the commissioner planned to formally initiate the dispute resolution process at the CBHE's April 19, 2022, meeting unless MAC and SEMO have arrived at an agreement by that date. Because the policy does not conflict with a statute or regulation, the commissioner plans to use the policy to guide the process.

The commissioner's decision to initiate the process is based on the following triggers listed in the policy:

- Tensions in the area have resulted in potentially detrimental effects on the delivery of academic programs; and
- All reasonable attempts to resolve the dispute have failed, assuming this is still true on April 19, 2022.

In her April 1, 2022, letter, the commissioner notified the parties that the next steps include:

- 1) She will address this dispute at the next regularly scheduled CBHE meeting, which will take place online from 1:00-3:00 p.m. CST on Tuesday, April 19, 2022.
- 2) The commissioner and her staff will give the board an overview, including a description of the dispute and the reasons staff believe dispute resolution is warranted.
- 3) The commissioner will identify the following disputed matters:
 - a) ***Can the parties come to a mutually beneficial agreement on the delivery of lower division coursework by working with a mediator?*** The commissioner plans to hire a mediator to assist with this discussion. As provided by the Policy on Dispute Resolution, the commissioner will identify the person who will preside over this portion of the process as soon as possible. The mediator will not be empowered to make binding recommendations regarding financial, programmatic, or operational matters.
 - b) If the answer to that question is yes, the parties will document their agreement about how lower division coursework will be delivered and the dispute resolution process will end. If the answer is no, the parties will address the following through arbitration. The commissioner will be the arbitrator of this process.
 - i) ***What review should be applied to MAC's proposals?***
 - ii) ***What is the effect of the Public Policy Guidelines on Lower Division Coursework...?***
- 4) As provided by the Policy on Dispute Resolution, MAC and SEMO will have an opportunity during the April CBHE meeting to respond and describe all efforts they have made to resolve the dispute. The board may set time limits on oral presentations.

At the conclusion of the meeting, the board, by a majority vote, will determine whether to refer the dispute to the commissioner for dispute resolution.

Limited General Applicability

The department's approach to and decisions about this matter reflect the unique nature of the circumstances and should not be interpreted as setting precedent for other issues. Aspects of this situation that make it unique include but may not be limited to:

- The long-standing nature of the dispute;
- The community's serious efforts to establish a community college;
- The fact that the department has been involved in past attempts to address the community's interest in community college services; and
- The fact that community college services are already being offered in the community.

RECOMMENDATION

Staff recommend that the Coordinating Board for Higher Education:

1. Determine that a dispute exists between Mineral Area College and Southeast Missouri State University regarding the use or expenditure of state resources.

2. Determine that disagreements about the provision of community college services in the Cape Girardeau region have reached a critical mass, resulting in potentially detrimental effects on the delivery of academic programs.
3. Determine that all reasonable informal attempts to resolve the dispute have failed.
4. Direct the commissioner to proceed with dispute resolution using the process outlined in the Policy on Dispute Resolution.
5. The scope of the dispute resolution will include:
 1. *Can the parties come to a mutually beneficial agreement on the delivery of lower division coursework by working with a mediator?*
 2. If the answer to that question is yes, the parties will document their agreement about how lower division coursework will be delivered and the dispute resolution process will end. If the answer is no, the parties will address the following through arbitration.
 1. *What review should be applied to MAC's proposals?*
 2. *What is the effect of the Policy Guidelines on Lower Division Coursework...?*

As indicated in the Policy on Dispute Resolution, an institution aggrieved by the commissioner's decision can ask the CBHE to reconsider the commissioner's decision within 30 days of its issuance. If such a request is made, the CBHE will review the written record and inquire of the parties to the dispute and the commissioner and make a determination based on the record. The CBHE's decision is final and binding.

ATTACHMENTS

Because discussion of this matter will likely span multiple meetings and is document-intensive, DHEWD staff will provide CBHE members with a binder that includes all relevant documents and reference materials. The binder will be updated as additional materials are provided by institutions or other parties. DHEWD staff have also created a landing page that centralizes all materials related to this matter so members of the Presidential Advisory Committee and other interested individuals can access all materials online. The binder contains a table of contents that lists the documents included in the binder.