



State of Rhode Island and Providence Plantations
Council on Postsecondary Education
OFFICE OF THE POSTSECONDARY COMMISSIONER
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Enclosure 8a
April 27, 2016

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TO: Members of the Council on Postsecondary Education

FROM: Jim Purcell, Ed.D, Commissioner for Postsecondary Education

DATE: April 20, 2016

RE: **Recommendations of the Commissioner regarding the *Petition in the Nature of a Complaint to the Council on Postsecondary Education* filed the three Named students against Rhode Island College**

Background

At its December 2, 2015 meeting, the Council referred the *Petition in the Nature of a Complaint to the Council on Postsecondary Education* filed by three named students against Rhode Island College to me to review the issues presented, including the issue of the Council's jurisdiction over this matter. The Council also requested that I provide a recommendation for action at a future meeting.

In response to this referral, a meeting with the Petitioners' and the College's legal counsel was held at the Office of the Postsecondary Commissioner on February 17, 2016. The sole issue that was discussed at that meeting was whether the Council has jurisdiction over the issues raised in the petition regarding the use of the HESI exit exam in the RIC nursing program. Each side was asked to address the Council's (and its predecessors') jurisdiction prior and subsequent to the amendments to Chapter 59 of Title 16 that were enacted through Article 20 of the budget submission for FY 2015.

The Petitioners' counsel asserted that under the Board of Governors' and Board of Education's prior jurisdiction, Rhode Island College was required to seek the Board approval for its adoption and use of the HESI exit exam in its nursing program, which the College had not done. In addition, the Petitioners' counsel argued that under the Board of Governors (now the Council's) *Regulations Governing Academic Changes in Rhode Island Public Institutions of Higher Education*, the College was required to, at minimum, provide notice to the Board of its adoption/use of the HESI exit exam in its nursing program,

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which it did not do. The College's use of the HESI examination, the Petitioner's counsel submits, was never approved, so the Council should move to curtail its use based upon its predecessors' prior jurisdiction as well as its current jurisdiction.

Counsel for the College indicated that the Council's present authority over the approval of educational programs at the College is limited pursuant to the changes enacted through Article 20 which were effective as of July of 2014. Specifically, the College's counsel indicated that under §15-59-4, the Council's present jurisdiction is only to determine whether a change in a program is within the role and scope of what has previously been approved, and that the authority to review these programs that was previously vested in the Board of Governors and the Board of Education is now, through the enactment of §16-33-2.1, granted to the President of Rhode Island College. Further, the College's counsel indicated that under the Board's and now Council's *Regulations Governing Academic Changes in Rhode Island Public Institutions of Higher Education*, the College's adoption and use of the HESI exit exam is not a significant change in the program which would require notice to the Board, either before the enactment of the 2014 amendments or after.

Analysis

Based on a review of all the information presented, it is clear that even prior to the enactment of the 2014 amendments to Chapter 59 of Title 16, there was set forth in the statute a line of demarcation regarding the Council's predecessors' authority over the institutions. There, it previously indicated that "... the Board shall not engage in the operation or administration of any subordinate committee, university, or community college ..." and this same language is maintained in the current version of this statutory section (R.I.G.L. §16-59-4(3)). Even with the prior authority to review programs at the institutions, past boards did not approve the adoption and use of examinations and/or the weight the school or department had decided would be placed on them as part of the program approval process. Such issues were outside of the Board's jurisdiction and therefore part of the administration of the institutions, the authority for which rested with the institutions themselves. In addition, pursuant to the Board of Governors and now the Council's applicable regulations, the adoption and use of such an exam is not a significant change in a program that would have required notification to the Board in the past, or would require notification to the Council today.

Given that the Council's jurisdiction regarding program approval is now limited to a determination as to whether a change or new course offering is within the approved role and scope of a program, it is clear that the authority to adopt and use an exam as part of a program's requirements lies with the institutions' presidents (consistent with shared governance practices) and not the Council. As such, this petition raises issues that are outside of the Council's jurisdiction over the public postsecondary institutions that is granted under Chapter 59 of Title 16 of the Rhode Island General Laws.

However, I also note that during our meeting the Petitioners' counsel did point out issues regarding the College's use of these exams in its nursing program that I believe should be reviewed again by that institution and its President.

Motion

Accordingly, it is recommended:

- 1. THAT, the Council on Postsecondary Education find that the *Petition in the Nature of Complaint to the Council on Postsecondary Education* filed by three named students against Rhode Island College raises issues that are outside the Council's jurisdiction, and**
- 2. THAT, the Council call on the President of Rhode Island College to once again look into the questions/issues that are raised in this petition regarding of the use of the HESI examination in the College's Nursing Program, and to provide the Council with the results of this inquiry.**

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COUNCIL ON POSTSECONDARY EDUCATION

[REDACTED]

v.

RHODE ISLAND COLLEGE

PETITION IN THE NATURE OF A COMPLAINT TO THE COUNCIL ON
POSTSECONDARY EDUCATION

GENERAL ALLEGATIONS

Parties

1. At all times relevant hereto, [REDACTED] (Petitioners") were residents of the State of Rhode Island.

2. Rhode Island College ("the College") is a public college operated by the State of Rhode Island, and duly organized under R.I.G.L. § 16-33-1 *et seq.*

Requirements for Licensure as a Registered Nurse in the State of Rhode Island

3. The Board of Nurse Registration and Nursing Education ("Board") is a state agency organized under the provisions of R.I.G.L. § 5-34-4.

4. Pursuant to R.I.G.L. § 5-34-4(2), one function of the Board is approval of basic nursing education programs according to the rules established by the Board.

5. Pursuant to R.I.G.L. § 5-34-4(4), another function of the Board is approval of examinations for nurse licensure.

6. Under Section 3 of the regulations of the *Rules and Regulations for the Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs* ("Rules") promulgated by the Board, an applicant for licensure as a Registered Nurse in the State of Rhode Island must have "... successfully completed the prescribed curriculum in a Board-approved basic professional nursing education program and holds a diploma therefrom."

7. Under Section 5 of the Rules, applicants must also successfully pass the approved examination for licensures, the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

8. Under Section 7 of the Rules, applicants who have successfully completed an approved basic professional nursing program may function as "graduate professional nurses." A graduate professional nurse may work under the supervision of a professional nurse for up to 90 days after submission of their initial application for licensure.

The College Nursing Program and the HESI Examination

9. At all times relevant hereto, the College purported to operate an approved basic professional nursing education program in accordance with Section 3 of the Rules.

10. The Mission of the College's undergraduate nursing program is:

. . . to prepare entry-level professional nurses to provide high-quality and equitable health care for all people. To accomplish our mission we offer a basic baccalaureate program and an RN to BSN program for Registered Nurses. The baccalaureate nursing program combines the liberal arts and nursing education to help students develop knowledge and perspectives that promote professional advancement and responsible citizenship. Nursing faculty foster the intellectual development and personal growth of students through a commitment to excellence in teaching and by working with students to attain program objectives. Embracing the richness of the educational experience and advantages to the profession and society that accrue from a diverse student population, the School of Nursing welcomes and responds to students who vary with respect to age, gender, ethnicity, race, and socio-economic status. Faculty and students contribute to the improvement of health care through practice, service, and scholarship activities that extend to populations, agencies and institutions throughout the city of Providence, state of Rhode Island, and the surrounding community.

11. One of the final courses taken in the undergraduate nursing program was titled "Transition to Professional Nursing Practice," often referred to as N375.

12. One component of N375 was the HESI Exit Exam E² published by the Health Education Systems, Inc. ("HESI").

13. At all relevant times, HESI counted for 30% of a student's final grade in N375.

14. As of spring semester 2015, the minimum score was 850.

15. At all relevant times, students were allowed one re-take of HESI before being denied 30% of the course credit for N375.

16. The loss of this 30% of credit for N375 meant that even if the student had excelled at the remaining course requirements, the student's grade will automatically drop below the "C"

passing grade for nursing courses at the College.

17. At all relevant times, under the policies of the undergraduate nursing program, students were permitted to re-take N375.

18. At all relevant times, a failure to achieve the minimum score at HESI during the re-take of N375 resulted in a second failure of N375.

19. At all relevant times, a second failure of N375 resulted in dismissal from the undergraduate nursing program.

20. To all intents and purposes, HESI is a high-stakes exit examination for the undergraduate nursing program at the College.

21. The rationale given for the HESI examination is that it predicts whether a student will successfully pass the NCLEX-RN on the first try and/or that HESI otherwise assists in preparation for the NCLEX-RN.

22. The failure to achieve minimum score of 850 on the HESI in fact does not reliably predict failure on the first try at NCLEX-RN. Statistics demonstrate that students who score 850 or higher have between a 96% and 99.1% chance of passing the NCLEX-RN on the first try. However, students who scored between 800-849 had a 93% chance of passing the NCLEX-RN on the first try. Furthermore, students who scored between 700-799 had an 85.3% chance of passing the NCLEX-RN on the first try.

23. Pursuant to the Rules, a Board-approved professional basic nursing education program is not required to maintain any first-time NCLEX-RN passage rate. At most, Section 15.5 requires a plan of correction should the first-time passage rate drop below 80%:

15.5 If the National Council Licensure Examination (NCLEX) score of program graduates who are submitting to said examination for the first time, falls below the eighty percent (80%) pass rate for this population, for a period from October 1st through September 30th of the following year, the Board will notify the program, requesting a proposal for analyzing the problem. Such proposal shall be submitted within ninety (90) days of the request. A plan of correction is to be submitted within nine months of the submission of the proposal.

15.5.1 If the program fails to respond to the request from the Board, or if the plan of correction is found to be deficient, a hearing would be held in accordance with these Regulations.

15.5.2 If the NCLEX results continue to fall below the eighty percent (80%) passing standard, the program representatives may be invited to meet with members of the Board.

[REDACTED]

24. At all times since [REDACTED] admission to the College, [REDACTED] was an honors student. [REDACTED] had also been admitted to the honors society for nursing students.

25. By the Spring Semester, 2015, [REDACTED] was about to successfully complete all of the requirements of the College's basic baccalaureate nursing program.

26. [REDACTED] thus reasonably anticipated that [REDACTED] would complete the nursing program at the conclusion of the Spring Semester, 2015 and graduate with [REDACTED] Bachelor of Science degree.

27. Petitioner [REDACTED] thus reasonably anticipated that upon graduation, [REDACTED] would be qualified to obtain employment as a graduate professional nurse, and sit for the NCLEX-RN in the summer of 2015.

28. Petitioner [REDACTED] enrolled in N375 in the [REDACTED] Semester.

29. Petitioner [REDACTED] successfully completed all of the requirements of N375 but for the minimum score of 850 on the HESI.

30. Petitioner [REDACTED] received a score of 835 on the first time [REDACTED] took the HESI examination, and 773 on the second try.

31. Because Petitioner [REDACTED] did not achieve the minimum score of 850 on the HESI, [REDACTED] did not successfully complete N375, nor did [REDACTED] graduate, nor was [REDACTED] qualified to obtain employment as a graduate professional nurse and sit for the NCLEX-RN in the summer of 2015.

32. Instead, Petitioner [REDACTED] is being required to re-take N375 again during the Fall Semester of 2015 in order to complete the nursing program and graduate from the College.

Petitioners [REDACTED]

33. Petitioners [REDACTED] are recent immigrants to this country.

34. Petitioners [REDACTED] have also been diagnosed with learning disabilities, and had been granted accommodation plans by the College. These accommodation plans included separate rooms and extra time for examinations.

35. Petitioners [REDACTED] have successfully completed all of the requirements of the basic baccalaureate nursing program but for the achievement of a minimum score on the HESI examination.

36. Petitioners [REDACTED] have taken N375 twice, but on both occasions were unable to achieve the minimum score on the HESI examination.

37. When sitting for the HESI examination, Petitioners [REDACTED] were not given the accommodations for their disabilities in accordance with their accommodation plans.

38. Because [REDACTED] did not achieve the minimum score on the HESI examination on either occasion that they took N375, they have been dismissed from the undergraduate nursing program.

COUNT I

39. Pursuant to R.I.G.L. § 16-33-1 the Board of Governors for Higher Education is responsible for the "control, management, and operation" of Rhode Island College.

40. Pursuant to R.I.G.L. § 16-97-1(a), effective January 1, 2013, the Board of Education succeeded to the powers of the Board of Governors for Higher Education.

41. Pursuant to R.I.G.L. § 16-59-1, as amended by P.L. ch. 14-45, the Council on Postsecondary Education was given, in addition to those powers specifically enumerated in R.I.G.L. § 16-59-1 *et seq.*, those powers "... usually appertaining to public corporations entrusted with control of postsecondary educational institutions and functions."

42. R.I.G.L. § 16-33-6 provides, with respect to governance of the College: "... it shall also be the duty of the president and a committee of the faculty, with the approval of the board of governors for higher education, to arrange courses of study, prescribe any qualifications for the admission of students and any rules of study, exercise, discipline, and government as the president and committee may deem proper."

43. R.I.G.L. § 16-59-4(a)(10) charges this Council to enforce the laws relating to higher education.

44. R.I.G.L. § 16-59-11, this Council possesses the authority to "... investigate all transactions and matters relating to higher public education in the state."

45. The *Regulations Governing Academic Changes in Rhode Island Public Institutions of Higher Education*, Section 1.a., required approval by the Board of Governors for Higher Education for any "significant changes" in an existing degree program.

46. The HESI examination requirement worked a significant change to the graduation requirements for students in the basic baccalaureate nursing program, in that it added a "high stakes" exit examination.

47. At no time did the President and/or the College obtain the approval of either the Board of Education or the Council on Postsecondary Education or the Board of Governors for Higher Education regarding the use of the HESI examination and/or a minimum score thereon as a requirement for graduation from the basic baccalaureate nursing program.

48. The President and/or the College thus acted in excess of its authority when requiring the HESI examination and/or a minimum score thereon as a requirement for graduation from the basic baccalaureate nursing program.

49. Because a student who receives a score of 700-799 on the HESI still has an 85.3% chance of passing the NCLEX-RN on the first try, there is no legitimate pedagogical or public health rationale for conditioning completion of the basic baccalaureate nursing program on a minimum 850 HESI score.

50. The arbitrary and capricious nature of the HESI requirement for the basic baccalaureate nursing students is underscored by those students who have enrolled in the "RN to BSN" program. The students in the RN to BSN program are students who already passed NCLEX-RN after completing basic professional nursing programs in settings other than a four-year college, such as the Community College of Rhode Island, or a hospital-based nursing school such as St. Joseph School of Nursing. The students in the RN to BSN program are not required to achieve any HESI score in order to receive their Bachelor of Science in Nursing degrees.

51. The President and/or the College thus acted in an arbitrary and capricious fashion when requiring the HESI examination and/or a minimum score thereon as a requirement for graduation from the undergraduate nursing program.

52. By arbitrarily and capriciously preventing students from completing the undergraduate nursing program, the President and/or the College thus acted contrary to the mission of the College's undergraduate nursing program.

53. The President and/or the College acted in violation of R.I.G.L. 42-112-1 when they failed to provide accommodations for Petitioners [REDACTED] learning disabilities.

54. As a result of the *ultra vires*, arbitrary, and capricious acts of the President and/or the College, Petitioners have been denied the opportunity to complete the basic baccalaureate program in nursing, obtain their Bachelor of Science degrees, and become eligible to apply for licenses as professional nurses in the State of Rhode Island.

55. As a result of the *ultra vires*, arbitrary, and capricious acts of the President and/or the College, the Petitioners have suffered substantial economic harm, and have also suffered extreme emotional distress.

WHEREFORE, the Petitioners respectfully request that this Council order that the College cease and desist from requiring the HESI examination and/or a minimum score thereon as a requirement for graduation from the basic baccalaureate nursing program, order that the

Petitioners' grades in N375 be calculated on the basis of the coursework other than HESI, and that the Petitioners be granted their degrees and nursing program completions forthwith.

Petitioners,
By their Attorney,

/s/ Stephen M. Robinson
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