



Tab 17

## Mineral Area College Academic Program Approval

Coordinating Board for Higher Education  
June 15, 2022

### BACKGROUND

Mineral Area College (MAC) requested CBHE approval to offer 46 academic programs at the Cape College Center in Cape Girardeau on February 28, 2022. The programs were listed in detail in the April 19, 2022, CBHE meeting board book.

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 from Southeast Missouri State University (SEMO), and it raised several important issues the commissioner determined should be considered before acting on MAC's academic program approval requests. The commissioner asked the CBHE to initiate a dispute resolution process, as authorized by § 173.125, RSMo, at a special meeting on April 19, 2022. The board accepted the commissioner's recommendation in part. Specifically, the board authorized the commissioner to hire a mediator to resolve the following dispute: *Can the parties come to a mutually beneficial agreement on the delivery of lower division coursework by working with a mediator?*

Department staff put MAC's request for academic program approval on hold until the conclusion of the dispute resolution process. Although the parties met and worked to identify a mutually agreeable solution, no agreement was reached.

### CURRENT STATUS

The department has reviewed the original routine review proposals and additional correspondence from MAC and SEMO, and discussed with MAC the programs it plans to offer in the near future. MAC is requesting that the department review the Associate of Arts (AA) and Associate of General Studies (AGS) degrees at this time, with other programs to be reviewed at a future date, if submitted.

#### Program Approval versus Location Approval

The department's administrative rules contain separate chapters that govern approval of academic programs and the approval of new institutions and instructional sites. The [chapter on new institutions and sites](#) includes sections on establishing new community college districts, standards for establishing residence centers, funding for off-campus and out-of-district instructional sites, and innovation education campuses. MAC's proposal does not meet the criteria to be considered under any of those sections.

1. **New community college district.** Establishment of a new community college district involves obtaining voter approval to establish a new district and taxes to support the district. If approved, the new community college would be governed by a locally elected board of trustees. MAC is not proposing to establish a new community college district.
2. **Residence centers.** A residence center is defined as a site that meets all of three criteria, with one additional criterion that automatically requires residence center review. MAC's plan appears to meet two of the three criteria and not trigger the one that automatically requires residence center review.

| Rule Language – 6 CSR 10-6.020(1)   | Department Analysis  |
|---|--|
| (A) A residence center is defined as a site separate from the established existing campus of a four (4)-year institution or outside the district boundaries of a two (2)-year institution and as having the following characteristics:  |  |
| 1. There is a continuing administrative presence, as evidenced by at least one (1) full- or part-time administrative position based at the location. Part-time administration refers to the presence of one (1) or more persons based at the site to assume responsibilities on a continuing, day-to-day basis. Part-time administration in this instance does not refer to those administrative services rendered from the main campus related to establishing the courses of instruction to be offered, such as registration; | <p>MAC's March 21, 2022, letter (Attachment A) indicates that it plans to staff its Cape Girardeau location similar to its other off-campus sites. MAC classifies the employees who would work in Cape as classified staff rather than administrative professionals. The department has not required other similarly staffed facilities to go through the process to establish a residence center.</p> <p><b>CRITERION NOT MET</b></p> |
| 2. Courses are to be offered in every semester at the location;   | <p>MAC's correspondence appears to indicate that the college plans to offer classes in Cape Girardeau every semester.</p> <p><b>CRITERION MET</b></p>  |
| 3. There may or may not be a complete academic program offered at the location; and   | <p>Complete programs will be offered at the location.</p> <p><b>CRITERION UNCLEAR</b></p>  |

The fourth criterion automatically triggers residence center review if met.

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| 4. There may or may not be a physical facility owned by the parent institution but acquisition of an instructional facility qualifies the location as a residence center regardless of the other criteria. | <p>MAC's March 21, 2022, indicates that MAC plans to enter into a lease agreement with the Cape Girardeau Public School District. The department's general counsel has examined the issue and concluded that "acquisition" requires an ownership right, which would not be held by a party in a lease agreement. In addition, the department has not required other community colleges operating in leased space to go through the process to establish a residence center.</p> <p><b>CRITERION NOT MET</b></p> |
|--|---|

3. **Off-campus and out-of-district instructional sites.** This section describes the steps an institution must take in order for funding for an off-site location to be included in the CBHE's budget recommendations, not the steps an institution must take to be approved to offer a program at a location other than its main campus.
4. **Innovation education campuses.** This section describes the steps an institution must take in order for funding for an innovation campus to be included in the CBHE's budget recommendations, not the steps an institution must take to be approved to offer a program at a location other than its main campus.

Because MAC's proposal does not meet the criteria for any of the locations, DHEWD staff evaluated the AA, AGS, and career and technical education proposals under the chapter governing program approval.

### Routine Review versus Comprehensive Review

The rule detailed above addresses the approval of a location. The department's rules also describe the steps an institution must take to gain approval of an individual academic program. As described above, MAC's proposals do not trigger the requirement to seek approval of a new location. The next step is to determine what kind of academic program review is required.

The department has three levels of review:

1. Staff review, which is appropriate for minor changes.
2. Routine review, the criteria for which are described in the Associate of Arts section below.
3. Comprehensive review, which is required for academic program proposals that meet any of the following criteria.

| Rule Language – 6 CSR 10-4.010(4)(B)  | Department Analysis   |
|---|---|
| 1. Proposed new academic programs that meet any of the following criteria will be subject to a comprehensive review:  |   |
| A. The institution will incur substantial costs to launch and sustain the program;  | Currently department is only considering MAC's request for approval to offer the Associate of Arts and the Associate of General Studies. Either of these programs can be launched with modest costs. MAC's March 21, 2022, letter indicates that MAC plans to hire three full-time staff in Cape Girardeau (although that number may be less if MAC is only approved to offer one program for the time being), and plans to use adjunct instructors to teach the new program(s). Department staff concluded that these do not constitute substantial costs.<br><br><b>CRITERION NOT MET</b> |
| B. The program will include the offering of degrees at the baccalaureate level or higher that fall within the Classification of Instructional Programs (CIP) code of 14, Engineering; | Not applicable.<br><br><b>CRITERION NOT MET</b>   |
| C. The program is outside an institution's CBHE-approved mission;   | MAC's CBHE-approved mission (Attachment B) indicates that the college is responsible for serving the residents of its taxing district and service region. Its service region now includes Cape Girardeau County. The CBHE-approved mission indicates that the college offers academic programs including programs that lead to the Associate of Arts degree. MAC's scope also includes offering programs at off-campus sites in its service region.<br><br><b>CRITERION NOT MET</b>   |
| D. The program will include the offering of a doctoral degree, as further described in paragraph (9)(C)3. of this rule (applicable only to non-University of Missouri institutions);  | Not applicable.<br><br><b>CRITERION NOT MET</b>   |

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| E. The program will include the offering of a professional degree, as further described in paragraph (9)(C)3. of this rule (applicable only to non-University of Missouri institutions); or | Not applicable.<br><b>CRITERION NOT MET</b> |
| F. The program will include the offering of an education specialist degree.   | Not applicable.<br><b>CRITERION NOT MET</b> |

Because MAC’s proposals do not meet the criteria to be considered under the comprehensive review process, routine review applies. The extent to which MAC’s proposals meet those criteria is described in the sections that follows.

### Rule versus Policy

SEMO has asserted that the department should evaluate MAC’s proposals using the 2003 *Public Policy Guidelines on Lower Division Coursework...* ([Tab VI-B](#) of the MAC-SEMO Dispute Resolution Binder). Department staff determined that the applicable standard is the administrative rule on academic program approval rather than the policy.

In Missouri, by law all “rules” must be promulgated through the Secretary of State and published in the Missouri Register through a process outlined in § 536.021, RSMo. This process allows for public comment and general assembly review of rules before they take effect. Rules adopted in violation of § 536.021, RSMo, are void.

Missouri courts define the term “rule” to mean “‘each agency statement of general applicability that implements, interprets, or prescribes law or policy.’ An agency standard is a ‘rule’ if it announces ‘an agency statement of policy or interpretation of law of future effect which acts on unnamed and unspecified facts.’” *NME Hospitals, Inc., d/b/a Kirksville Osteopathic Medical Center v. Dept. of Social Services*, 850 S.W.2d 71, 74 (Mo. 1993).

At issue in *NEM Hospitals* was whether a change in a Department of Social Services Medicaid policy was a policy of general applicability. The Missouri Supreme Court held that the Medicaid policy was a “policy of general applicability” because it applied to all Medicaid participants, and that it was void and unenforceable because it was not promulgated as a rule. *Id.*

A court would likely find that the lower-division policy is a policy of general applicability because it attempts to implement and prescribe law and policy to all public colleges and universities in Missouri. As a result, the department concluded that a court would likely find that the lower-level policy should have been promulgated as a rule and is therefore unenforceable. The policy is still valuable in that it can be used to understand where the department and institutions intended to direct statewide policy in 2003, but it is not enforceable in a court of law.

In addition, it is not clear that the policy would preclude MAC’s request for academic program approval even if it was enforceable. The policy acknowledges that some instances warrant “necessary duplication” of academic programs in a geographic area (Section 4.2) and that “[t]he overlap among institutions in lower-division coursework is extensive because of lower-division course requirements the students must complete to receive undergraduate certificates and degrees.”

The policy also states, “Within the county in which a public four-year institution is located, the public four-year institution should be the primary provider of lower-division coursework...” (emphasis added; Section 9.2). The policy does not state that the public four-year institution should be the only provider. MAC’s March 21, 2022, letter estimates that the college will serve a total of 200 students in Cape Girardeau. DHEWD’s Fall 2021 Enrollment Report indicates that SEMO’s headcount enrollment is about 7,800 students. Even if MAC’s enrollment estimates are low, SEMO will clearly continue to be the primary provider of lower-division coursework in Cape Girardeau County.

SEMO also indicates that MAC has violated the provisions of the policy that require open communication, collaboration, and good faith. MAC makes similar claims about SEMO. Department staff are not in a position to determine that either party failed to meet these expectations more substantially than the other. The situation has been extremely challenging for both MAC and SEMO – as well as each institution’s advocates and allies – and the fact is that the parties have been unable to identify a collaborative solution.

Finally, the policy has often been understood as giving public universities the “right of first refusal” to offer lower-division coursework in their home counties. That language is not included in the policy itself. The belief appears to stem from a February 2002 CBHE board item ([Binder Tab VI-H1](#) in the MAC-SEMO Dispute Resolution Binder) regarding Lincoln University and State Fair Community College. The staff recommendation in that board item states, “As a local provider with a full complement of general education courses, LU should be given the opportunity for a first right of refusal to teach all general education courses offered as State Fair Community College courses.” It is important to understand the context around that recommendation:

- The same board item emphasizes the “potential for unnecessary duplication between two publicly supported open-enrollment institutions.” (Emphasis added.)
- The meeting summary of the February 2002 meeting ([Binder Tab VI-H2](#) of the MAC-SEMO Dispute Resolution Binder) indicates that department staff “noted that the recommendation prepared for this situation is not meant as a solution for other two- and four-year institutions having similar discussions. The recommendation is only applicable for State Fair and Lincoln in Jefferson City.”
- The department’s recommendations forced Lincoln and State Fair into a partnership that was not ultimately successful. State Fair eventually decided to stop serving Jefferson City. They cited inability to make the arrangement work financially in their decision to depart.

### **New Academic Program Approval Analysis**

As indicated above, department staff have reviewed the relevant statutes, administrative rules, and policies, and concluded that MAC’s proposal to offer academic degree programs in Cape Girardeau should be reviewed under the routine review process. Department staff are only evaluating the programs MAC has indicated it plans to offer in the near future, the AA and the AGS.

#### **Associate of Arts (AA)**

To be approved through routine review, a proposal must meet the following requirements.

1. **Role, Scope, or Mission.** 6 CSR 10-4(4)(B) provides that routine review is appropriate for changes that do not constitute a significant change in an institution’s current role, scope, or mission. MAC’s CBHE-approved mission (Attachment B) indicates that the college is responsible for serving the residents of its taxing district and service region. Its service region now includes Cape Girardeau County. The CBHE-approved mission indicates that the college offers academic programs including programs that lead to the Associate of Arts degree. MAC’s scope also includes offering programs at off-campus sites in its service region.
2. **Unnecessary Duplication.** 6 CSR 10-4(4)(B) provides that routine review is appropriate for changes that do not result in unnecessary duplication of an existing program in the applicable geographic area. DHEWD staff have reviewed the available information and concluded that MAC’s proposal to offer an AA in Cape Girardeau does not constitute unnecessary duplication. Factors staff considered in reaching that conclusion include:
  - a. **Demand for More Bachelor’s Degrees.** The AA is a transfer degree, which means that students who earn the degree are generally planning to transfer to a four-year institution to complete a bachelor’s degree rather than immediately entering the workforce. Data supporting workforce demand for the AA is, therefore, limited. Data supporting the need for more bachelor’s degree

holders is, however, provided in the [2021 Feasibility Study for the Great River Community College District](#). The 2021 Feasibility Study found that in the Cape area, the percentage of working-age adults who have earned a bachelor’s degree (14 percent) is lower than the state (18 percent) and nation (20 percent) (page 1). Further, the study finds that there is unmet demand for bachelor’s degrees among area employers (page 2).

In surveying employers, the report found “qualified candidates with a bachelor’s degree were difficult to find, according to 42 percent of employer respondents, followed by associate degrees (39 percent), certificates (35 percent), and high school diplomas (34 percent)” (page 3).

The report highlights that postsecondary graduation has declined by one percent over the past five years (page 28), and that there are more jobs that require bachelor’s degrees in Cape Girardeau County than there are individuals with bachelor’s degrees (page 39), indicating a need to increase bachelor program completions.

The AA will create an additional access point for students to transfer to a four-year institution to complete a bachelor’s degree, which was identified in the report as a compelling need. In addition, MAC’s correspondence indicates that MAC leaders plan to partner with SEMO to encourage students to transfer to SEMO to complete bachelor’s degrees. This argument is a significant factor.

- b. **Open Enrollment Option.** SEMO’s CBHE-approved mission description (Attachment C) indicates that the university is a moderately selective institution. [SEMO’s website](#) indicates strong willingness to work with students who are interested in being admitted to the institution and indicates that its admission requirements are generally:

| Cumulative High School GPA | Superscored ACT Score        |
|----------------------------|------------------------------|
| 2.75+                      | Not required (test optional) |
| 2.5+                       | And 19+                      |
|                            | 21+                          |

MAC is an open enrollment institution, which means that students can be admitted regardless of high school GPA or ACT score. ACT’s [“Average ACT Scores by State/Graduating Class of 2020”](#) report estimates that 22 percent of Missouri high school graduates do not take the ACT, and that the average composite score is 20.7. It stands to reason, therefore, that some students will be unable to meet SEMO’s admissions requirements. If the status quo does not change, these students will have no local postsecondary education option. MAC will provide that option.

- c. **Affordability.** MAC argues that affordability is an important reason to approve its proposals because of the opportunities the A+ Scholarship provides. Many of the letters of support from community members echo that sentiment. Department staff acknowledge the argument but point out that SEMO also offers extensive scholarships, including the Will To Do Award. According to SEMO’s [website](#), the Will To Do Award “ensures students will pay \$0 in Tuition and General Fees, by covering any remaining amount after applying Pell, Access Missouri, and other tuition specific grants/scholarships.” This scholarship provides low-income Missourians with a significant benefit. Based on this, affordability is a less important factor in the department’s recommendation than other reasons cited throughout this board item.
- d. **Significant Historical and Ongoing Community Interest.** The slide deck that accompanies the April 19, 2022, CBHE meeting materials summarizes the long history of community support for making community college services available in Cape Girardeau. The materials for that meeting also include public comments in support of MAC’s proposal to expand community college offerings in Cape Girardeau. SEMO has argued that MAC actively solicited these proposals. Others have suggested that some community members acting in partnership with MAC solicited the proposals.

Regardless of the genesis of the comments, DHEWD staff note that while some of the comments use boilerplate language, many present unique arguments in support of MAC’s proposal, and that even those that use boilerplate language should be given some weight.

DHEWD staff also note, however, that few of the public comments are narrowly focused on the need for an AA or AGS degree alone. Rather, most speak more broadly to the importance of having more options for local residents, the need for access to career and technical education, and the relevance of the A+ Scholarship Program. Based on this, DHEWD staff conclude that part of the justification for recommending approval of the AA degree is that enrollment in the AA program is a necessary prerequisite to providing the broader set of services community members have advocated for.

- 3. CBHE-Approved Off-Site Location.** 6 CSR 10-4(4)(B)1C provides that routine review is appropriate for proposals to offer programs at “a CBHE-approved off-site location.” The extent to which MAC meets this criterion should be straightforward, but it is complicated. The department’s record-keeping regarding off-campus locations has been inconsistent historically. In 2014, department staff worked with institutions’ chief academic officers to develop an inventory of residence centers and off-site delivery locations. That work was memorialized in a February 6, 2014, board item (Attachment D). The board item included an inventory of off-campus locations. The only location listed for MAC in Cape Girardeau is an instructional site for dual credit at Central High School, despite the fact that MAC had been offering career and technical education programs in Cape Girardeau since 2000 or earlier, had been approved to offer 18 career and technical education programs between 2007 (or earlier) and 2010, and was part of the Cape Girardeau County Partnership Agreement (2009) and the Cape College Center Partnership Agreement (2016). The fact that MAC’s Cape site is not listed in the 2014 inventory may simply have been an oversight on the part of MAC staff at the time. The situation is further complicated by the fact that department rules do not include procedures institutions must follow to request authority to establish a new off-site location.

Finally, some department records indicate that MAC’s Cape Girardeau site is an approved off-site location. This screenshot from the department’s college and degree search tool lists the Cape Girardeau Career/Tech Center as an off-site location.

The screenshot displays the program details for Mineral Area College. At the top, the college name "Mineral Area College" is centered, with a "Compare" button below it. The main address is "5270 Flat River Road, Park Hills, MO 63601", with a phone number of "573-431-4593". The institution type is "Public 2-Year Schools" and the selectivity is "Open Enrollment".

Below this, there are two columns of information. The left column includes a "Compare" button, the program title "Construction/Building Technology", degree type "Associate in Applied Science", degree level "Associate Degree", CIP code "460201", unique identifier "A03090004471001010006", program accreditation agency "N/A", admissions criteria "Not provided", and program delivery "Classroom". A "Show program details" button is located at the bottom of this column.

The right column lists "Locations". Under "Main campus", the address is "5270 Flat River Road, Park Hills, MO 63601", phone number is "573-431-4593", and accreditation agency is "HLC". Under "Off-Site", the site name is "Cape Girardeau Career/Tech Center", address is "1080 Silver Springs Road, Cape Girardeau, MO 63701", phone number is "573-431-4593", and accreditation agency is "HLC".

Given the lack of clarity and the fact that the department does not currently have a process by which an institution may seek approval of an off-site location, department staff recommend that the board formally

approve MAC's Cape Girardeau location as an off-site location. As the 2014 board item indicates, "it is impractical, not to mention unfair, to ask institutions to seek CBHE approval retroactively for off-campus sites."

4. **Experience.** 6 CSR 10-4(4)(B) provides that routine review is appropriate for proposals that build on existing programs and expertise. MAC has a long history of offering the AA, including at off-site locations. The college will build on those existing programs and expertise in its delivery of the AA in Cape Girardeau.
5. **Minimal Cost.** 6 CSR 10-4(4)(B) provides that routine review is appropriate for proposals that will involve minimal cost to launch, and those costs are within the institution's current operating budget. The AA is generally a low-cost degree because it does not require the purchase of specialized equipment, the use of specialized space, or the employment of highly specialized faculty members. MAC has been involved in discussions with community leaders about funding to expand their presence in Cape Girardeau, but DHEWD staff's understanding is that the funding would be used primarily to expand/enhance facilities owned by the school district and used for career and technical education programs, not for MAC to offer the AA.
6. **Approved Program.** 6 CSR 10-4(4)(B) indicates which programs can be approved through routine review. The list includes "an approved program." MAC has been approved to offer the AA at its home campus and other locations.
7. **Concerns Resolved.** The rule that governs routine review provides that the commissioner will recommend provision approval of a new degree program "once all concerns are resolved." The resolution of the parties' work with the mediator is that they were unable to reach an agreement. Department staff have exhausted all efforts at resolving the dispute between MAC and SEMO.

Based on the factors described above, department staff recommend provisional approval of MAC's proposal to offer the AA in Cape Girardeau, subject to the requests described in the recommendation section. The commissioner is asking the board to vote on the recommendation rather than taking final action on the request herself because of the highly contentious nature of this issue.

### **Associate of General Studies (AGS)**

DHEWD staff reviewed the relevant statutes, administrative rules, and policies, and concluded that MAC's proposal to offer an Associate of General Studies (AGS) degree may be considered through routine review if MAC is able to provide documentation indicating why it the degree is sufficiently necessary to justify duplication of lower-division coursework currently provided by SEMO. The AGS proposal meets the other criteria, but no information supporting the need for the program is provided in the request for approval itself, the community college study, or the letters of support.

While the community college study highlights need for associate-level degrees, the report does not find data identifying a compelling need for the AGS in the area (see Exhibit 106 on page 92 for detailed list of programs). The AGS proposal does not meet the compelling need criterion at this time. In order for the department to consider approving the AGS to offer in Cape Girardeau, MAC needs to submit a compelling rationale justifying the need for the program.

### **Other Programs**

The Coordinating Board has authorized MAC to offer the following programs in Cape:

- Automotive Collision Technology (certificate, AAS) (approved before 2007)
- Automotive Technology (certificate, AAS) (approved before 2007)
- Construction/Building Technology (certificate, AAS) (approved before 2007)

- Design & Wood Manufacturing (AAS) (approved 2008)
- Digital Media Technology (AAS) (approved before 2007)
- Electrical Technology (certificate, AS) (approved 2008)
- Graphic Arts/Printing Technology (certificate, AAS) (approved before 2007)
- Heating, Air Conditioning, & Refrigeration (certificate, AAS) (approved 2010)
- Physical Therapy Assistant (AAS) (approved 2010)
- Respiratory Therapy (AS) (approved before 2007)
- Welding Technology (certificate, AAS) (approved before 2007)

MAC's request to offer these programs in Cape is unnecessary, as they already have authority to do so. MAC may continue to offer these programs in Cape.

This leaves 26 programs MAC has requested approval to offer. Some of these proposals may meet the criteria for comprehensive review rather than routine review. Department staff decline to approve or reject those proposals at this time and ask instead that MAC withdraw them and submit them at a time when the college has concrete plans to offer them in the near future.

## **RECOMMENDATION**

Staff recommend the following with regard to MAC's proposal to offer the AA, AGS, and other programs in Cape Girardeau:

- Associate of Arts
  - Approve MAC's request to offer the AA in Cape Girardeau through the routine review process.
  - Require MAC to provide clearly defined performance goals for the new program during its five-year provisional approval phase. The goals should relate to all of the rationale identified in support of MAC's assertion that the AA will not unnecessarily duplicate classes or programs currently offered by SEMO, including:
    - Enrollment in the AA program
    - Completion of the AA program
    - Transfer to SEMO
    - Generation of revenue to support establishment/expansion of CTE programs
- Associate of General Studies: Do not approve MAC's request to offer the AGS in Cape Girardeau until MAC provides evidence documenting the need for the degree.
- Other programs
  - Acknowledge that the CBHE has authorized MAC to offer the already-approved programs.
  - Ask MAC to withdraw proposals for any of the proposals it does not plan to offer in the 2022-2023 or 2023-2024 academic year and resubmit individual proposals no sooner than 24 months before it plans to offer such programs.

In addition, staff recommend that the board acknowledge that MAC's Cape Girardeau location is an approved off-site location.

#### **ATTACHMENTS**

- A. March 21, 2022, Letter from Mineral Area College (MAC/SEMO Dispute Resolution Binder Tab IV-B)
- B. Mineral Area College's CBHE-Approved Mission (MAC/SEMO Dispute Resolution Binder Tab VI-J)
- C. Southeast Missouri State University's CBHE-Approved Mission Description (MAC/SEMO Dispute Resolution Binder Tab VI-K)
- D. February 6, 2014, CBHE Board Item on Off-Campus Delivery of Academic Programs (MAC/SEMO Dispute Resolution Binder Tab VI-L)