



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

Docket No. 11-67-SP

WEST VALLEY OCCUPATIONAL CENTER,

Federal Student Aid
Proceeding

Respondent.

PRCN: 2009 2092 6889

Appearances: Veronica Montes, Principal, for West Valley Occupational Center.

Sarah L. Wanner, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

West Valley Occupational Center, WVOC, is a public, post-secondary vocational school managed by the Los Angeles Unified School District and which offers programs below the degree level. It is a participant in the Federal Work Study (FWS) program which is authorized under Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Office of Federal Student Aid (FSA) of the United States Department of Education (Department) administers this program. On August 10, 2011, FSA issued a Final Program Review Determination (FPRD) assessing a liability of \$128,150.91 against WVOC following a review of WVOC's administration of the Title IV programs during the award year 2008. WVOC filed a timely appeal of this determination on November 10, 2011.

For Title IV purposes, the regulations at 34 C.F.R. § 600.6 define an eligible institution for a postsecondary vocational education as one which is either a public or private non-profit educational institution and which is accredited. "Accredited" is defined in the regulations as the status of public recognition that a nationally recognized accrediting agency grants to an

institution that meets the agency's established requirements. 34 C.F.R. § 600.2. A "nationally recognized accrediting agency" is one that the Secretary of Education (Secretary) recognizes as constituting a reliable authority to determine the quality of education or training offered by an institution. Id. Under 34 C.F.R. Part 602, the Department specifies the scope of the recognition it has granted for each agency. To satisfy Title IV's accreditation requirement, an institution's accreditation must fall within the scope recognized by the Secretary. Therefore, if an accrediting agency grants accreditation to an institution which is beyond the agency's scope, the regulations require a finding the institution is not accredited and, consequently, is ineligible to participate in Title IV federal student aid programs.

At all times relevant to this case, WVOC was accredited by the Accrediting Commission for Schools of the Western Association of Schools and Colleges (ACS). However, in March 2005, the Secretary notified ACS that she found it out of compliance with the regulatory criteria on which ACS's recognition as an accrediting agency was based, and required it to demonstrate full compliance. More specifically, the Secretary found that ACS's use of a "Focus on Learning" criteria in its evaluation process was unacceptable and, therefore, institutions receiving accreditation by ACS using this process were technically ineligible to participate in Title IV programs.

Upon receiving this notification from the Secretary, ACS immediately devised a new accrediting process which did not include the non-compliant "Focus on Learning" process. The Secretary found the new process acceptable and renewed ACS's status as a nationally recognized accrediting agency. Apparently when ACS submitted its new accrediting process to the Department for review, it did not tell the Department it also retained the original "Focus on Learning" process which it reserved for use with institutions that do not participate in Title IV federal student aid programs.

Recognizing that ACS's loss of recognition as of March 28, 2005, and its subsequent renewal on May 1, 2006, would be very disruptive to ACS's client- institutions, the Department exercised its discretion pursuant to 20 U.S.C. § 1099c(h)(2) to extend the accreditation status of schools whose existing accreditation status was based on the Focus on Learning process for an additional period until December 31, 2007. This meant that WVOC, and other ACS clients who also were Title IV participants, were required to obtain accreditation under the new process approved by the Secretary. In order to serve all of its clients and implement its new accreditation process, ACS, on several occasions, contacted all of its schools, including WVOC, asking for verification that the schools were participating in Title IV programs and advising them they would need to use an accreditation self-study document which was quite different from the previous procedures they had been following. Additionally, ACS conducted training sessions for all their clients, including WVOC, at which time ACS personnel stressed that ACS-accredited schools that had been accredited under the Focus on Learning process and were participating in Title IV programs had to obtain accreditation under the newly recognized accrediting process. For some unknown reason the administrative personnel at WVOC were unaware that their participation in the FWS program meant they were participating in a Title IV. Accordingly, when ACS polled WVOC for verification it was a Title IV participant, it responded in the

negative. Consequently, ACS continued to utilize the non-compliant Focus on Learning process in granting it accreditation status to WVOC and the latter continued to accept federal funding for its FWS program. WVOC did not believe it was necessary to obtain accreditation under the new process from ACS by the December 31, 2007, deadline, and it pursued business as usual and drew down \$128,150.91 in Title IV funds for its FWS program during calendar year 2008.

WVOC does not contest the facts as presented by FSA but requests that it be given a waiver of liability because during the period under discussion here it believed it had the appropriate accreditation status. It bases this conclusion on information it received from, and the actions taken by both ACS and representatives from FSA. Additionally, it advocates that the imposition of this liability upon it would create a significant hardship on the school which in turn would have an adverse effect on its students, most of whom are low-income, unemployed residents of the Los Angeles area.

WVOC explains that it received a June 28, 2005, letter from the director of the FSA School Participation Management team which reminded the school its Program Participation Agreement (PPA) was about to expire, and contained information concerning the recertification process. WVOC submitted its recertification application on July 21, 2005, and FSA informed the school on March 1, 2007, that upon review of its application for approval, the Secretary had determined that WVOC satisfies the definition of an eligible institution. WVOC has submitted a copy of an Eligibility and Certification Approval Report (certificate) it received from FSA that was printed on January 7, 2008 and indicates it is accredited by ACS, the "Effective Year" is 2005, and this certificate is good for six years. It has also submitted a copy of its new, signed PPA it received from FSA showing an expiration date of June 30, 2009. Further evidence that WVOC believed it was eligible occurred in December 2007 during an FSA training session for schools participating in Title IV programs. At that time FSA staff indicated WVOC's PPA was good until March 2012. Additionally, FSA's January and July 2008 Federal School Codes publications listed WVOC as being eligible to disburse federal student aid. As a result of these various representations by FSA, WVOC continued to disperse FWS program funds to its students up until notified in 2009 that its accreditation with ACS was inappropriate for schools participating in Title IV programs. WVOC responded by immediately contacting ACS to apply for the appropriate accreditation. ACS completed its visitation of the school on August 12, 2009, and on February 2, 2010, ACS notified WVOC its accreditation was approved and is valid until June 30, 2016.

WVOC submits that it acted in good faith during this entire process and assumed it had a valid accreditation rating with ACS all along, and that nothing FSA did or said caused it to believe otherwise. It points out it is a low-cost, public adult and occupational center in the Los Angeles area and a requirement it repay \$128,150.91 to the Department will require it to reduce services to its students. For this reason it requests a waiver of this liability.

Institutions that enter a PPA with the Department act in the nature of a fiduciary in the administration of the Title IV programs, and are held to the highest standard of care in performing these responsibilities 34 C.F.R. § 668.82(a). As in all cases of this nature wherein

the institution has been charged with disbursing Title IV funds at a time when it lacked appropriate eligibility, the institution has the burden of proving that the expenditures questioned or disallowed were proper and that it complied with all Title IV program requirements. 34 C.F.R. § 668.116(d). WVOC cannot prove that it was an eligible institution during calendar year 2008 because of its failure to maintain appropriate accreditation; and, therefore, it cannot prove that the questioned expenditures were proper. See, In the Matter of Health Opportunity Technical Center, Dkt. Nos. 11-14-EA, 11-16-ST, U.S. Dep't of Educ. (May 5, 2011), and the cases cited therein.

WVOC does not attempt to defend its ineligibility, but rather seeks a waiver based on the surrounding circumstances. It maintains it was not aware until mid-2009 that the ACS accreditation it received was to be used only for non-Title IV participating schools. It further adds that in all of its interactions with FSA subsequent to ACS's loss of recognition by the Secretary, there was never any comment or suggestion which put WVOC on notice of any impropriety. However, WVOC fails to mention or explain how it did not know that FWS program funds were not Title IV sourced, despite the repeated admonitions and training sessions provided by ACS in an attempt to educate its clients regarding changes in its accreditation process. Unfortunately, reliance upon erroneous advice from a Department employee is not a defense to a charge of failure to maintain all eligibility requirements. See generally, 34 C.F.R. § 668.14(b)(1); In the Matter of Academia La Danza Artes Del Hogar, Dkt. No. 90-31-SP, U.S. Dep't of Educ. (initial decision May 19, 1992), aff'd by the Secretary (Aug. 20, 1992). On a favorable note, there is no evidence that the quality of WVOC's educational programs or other eligibility criteria were deficient during 2008; and once WVOC realized its accreditation was inadequate, it expeditiously applied for and received the appropriate accreditation from ACS. Although not suggested by WVOC, in all likelihood, if it had applied to ACS for accreditation under the new process, it probably would have received accreditation and would have avoided this adverse action.

Despite these positive factors, the tribunal does not have the plenary authority to waive any of the statutes or regulations applicable to this recovery proceeding. This authority can be exercised only by the Secretary. 34 C.F.R. § 668.117(d); In the Matter of Willoughby Eastlake School of Practical Nursing, Dkt. No. 09-02-SP, U.S. Dep't of Educ. (Decision of the Secretary, Nov. 12, 2010; denying reconsideration, Apr. 14, 2011). Accordingly, I must affirm WVOC's liability of \$128,150.91. **ORDER**

On the basis of the foregoing, it is hereby **ORDERED** that West Valley Occupational Center pay \$128,150.91 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: January 20, 2012

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

Veronica Montes, Principal
West Valley Occupational Center
6200 Winnetka Ave.
Woodland Hills, CA 91367

Sarah L. Wanner, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110