



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

TROCAIRE COLLEGE,

Docket No. 02-78-SP

Federal Student Aid Proceeding

Respondent.

DECISION OF THE SECRETARY

This matter comes before the Secretary on appeal by Respondent, Trocaire College (Respondent/Trocaire) of the Decision issued by Chief Administrative Law Judge Allan C. Lewis (ALJ) on April 4, 2003. On July 17, 2002 the office of Federal Student Aid of the United States Department of Education (FSA) issued a final program review determination (FPRD) seeking to recover \$482,313.00 of Title IV funds. FSA claims that Respondent improperly disbursed these Title IV funds as a result of Respondent's failure to apply to and obtain approval from the Secretary of the United States Department of Education to add a program to its Title IV eligibility certification prior to its disbursement of Title IV funds to students enrolled in the program.

Trocaire College is a small, private college founded over forty years ago in Buffalo, New York which offers two-year associate degree programs in various areas such as business, technology and health as well as one-year certificate programs such as computer office specialist, medical coding, nursing and office technology.

In January 2000, Trocaire began offering a certificate program in Transportation Technology: Trucking Certificate Program (Program). The Program consisted of 28 credit hours with 14 weeks of classroom study in courses such as transportation operator wellness, basic trucking operations and vehicle systems and advanced vehicle operations. The classroom study was followed by an on-the-job training externship. Before offering the Program, Trocaire had applied to the New York State Department of Education which approved the Program. Many of the students in the Program received Title IV funds. Although Trocaire no longer offers this particular Program, the issue before the Secretary involves Title IV funds disbursed by Trocaire to students enrolled in the Program when it was offered.

DISCUSSION

Under 34 C.F.R. § 600.10(c)(1), if an institution adds an educational program after it has been designated as an eligible institution by the Secretary, the institution must apply to the Secretary to have the additional program designated as an eligible program of the school before the school may disburse Title IV funds to students in the program. However, prior approval of the Secretary is not required, if the program prepares a student for gainful employment in the same or a related recognized occupation as an educational program that previously has been designated an eligible program by the Secretary. 34 C.F.R. § 600.10(c)(2).

Under the circumstances of this case, when confronting the application of section 600.10(c)(2)(ii), there are two considerations.¹ First, the regulation requires a determination concerning the type of program the institution has added to its curriculum, then the regulation requires a comparison between the new program and the pre-existing eligible programs to determine whether the new program prepares students for employment in the same or a related recognized occupation as the pre-existing eligible programs.

In assessing whether section 600.10(c)(2) authorized Respondent to disburse Title IV funds to students enrolled in the Transportation Technology: Trucking Certificate Program without seeking prior approval of the Secretary, the ALJ compared the occupation of “commercial truck driver” to the eligible programs that prepared students for recognized occupations in “computer office work, diagnostic medical sonography, echocardiography, massage therapy, medical billing, medical coding, medical office technology, medical transcription technology, nursing, and office technology.” On this basis, the ALJ concluded that the truck driver occupation was not the same or similar to the occupations for which Respondent’s pre-existing eligible programs prepared students. As such, according to the ALJ, Respondent could not rely upon section 600.10(c)(2) and, therefore, should have obtained approval for its new program prior to disbursing Title IV funds to students enrolled in the program.

Respondent ostensibly argues that the ALJ erred in applying section 600.10(c)(2) by substituting his own view for the state’s concerning the type of program the Respondent added to its curriculum. Respondent’s Transportation Technology: Trucking Certificate Program was registered by the New York State Education Department, which oversees postsecondary institutions in New York State, including reviewing institutions within the State proposing to offer new programs. The State Education Department registered Respondent’s new program in 1999 because the program conformed to the standards for registration, as determined by the State Education Department, in the discipline area of business. According to the State Education Department, at the time of registration of the new program, Respondent offered other business programs including those in marketing, distribution, business management, and business and

¹ Trocaire argued that it also could forgo prior approval by the Secretary of its new program in accordance with section 600.10(c)(2)(i), wherein a new program may be offered without prior approval by the Secretary if the program “[l]eads to an associate, baccalaureate, professional, or graduate degree.” The ALJ flatly rejected Trocaire’s argument as having “no merit.” The Secretary agrees with Judge Lewis.

commerce technology. In this case, the State of New York Department of Education in its application review process determined that Trocaire's Trucking Certificate Program was sufficiently related to already approved existing business programs at the institution.

After a review of the briefs submitted by the parties in this case, the evidence presented, and based upon the narrow facts and circumstances of this case, the Secretary determines that the Trucking Certificate Program is sufficiently related to prior existing approved programs at the institution.

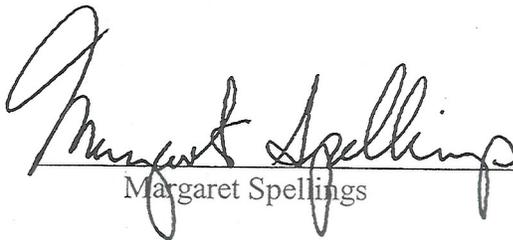
The application of section 600.10(c)(2) requires a comparison between the various business occupations available to students enrolled in Respondent's programs during the period at issue. Respondent's Transportation Technology: Trucking Certificate Program is related to the occupations for which Respondent's pre-existing eligible business programs prepared students. Accordingly, the application of section 600.10(c)(2) did not require Respondent to obtain approval from the Secretary prior to disbursing Title IV funds to students enrolled in the program.

Notwithstanding the aforementioned holding, institutions should be mindful that this decision is narrowly tailored to the circumstances of the case under review; it remains obligatory that prior approval by the Secretary of a proposed program must be obtained, unless the change falls within one of the exceptions listed in 34 C.F.R. § 600.10(c)(2). Institutions must review any proposed program expansion carefully prior to disbursing Title IV funds to students enrolled in said programs, as a subsequent determination by the Secretary that prior approval was necessary would result in the institution being found liable for the return of the improperly disbursed funds.

ORDER

ACCORDINGLY, the decision issued by Chief Administrative Law Judge Allan C. Lewis on April 4, 2003 is HEREBY REVERSED and Trocaire College is not liable to repay the Title IV funds sought by the FSA in this proceeding.

So ordered this 15th day of January 2009.


Margaret Spellings

Washington, D.C.

SERVICE LIST

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

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

Michael R. Moravec, Esq.
Phillips, Lytle, Hitchcock, Blaine & Huber
One HSBC Center, Suite 3400
Buffalo, New York 14203-2887