



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

EDNET CAREER INSTITUTE,

Docket No. 07-41-SP
Federal Student Aid Proceeding

Respondent.

ORDER DENYING RECONSIDERATION

This matter comes before me on motion¹ by Respondent, EdNet Career Institute, dated May 3, 2011, seeking correction of an "error" in the decision I issued in this case on November 12, 2010.² For the reasons that follow, Respondent's request for reconsideration is denied.

This case first came before me as a result of Respondent's filing a request seeking my review of an Administrative Judge's (AJ) Initial Decision requiring Respondent to pay \$385,201 to the U.S. Department of Education and \$26,812.73 to student loan accounts. Respondent requested that I reverse or vacate the Initial Decision and remand this case for further proceedings. I upheld the findings of the Initial Decision and concluded that, on the basis of the fact-finding of the AJ, I was persuaded that Respondent failed to account for the disbursement of Federal student aid funds during the 2001-2002 and 2002-2003 award years. Included in my holding was my conclusion that the AJ correctly decided that for each of the four findings at issue, Respondent owed a liability; this includes Finding 10, wherein the AJ was convinced that Respondent failed to ensure that satisfactory academic progress standards were adequately monitored and applied to students. In rendering his determination, the AJ's opinion is clear that he reviewed the record for evidence of credible and consistent attendance records and other indices of academic progress. On this basis, the AJ concluded that Respondent "has not persuaded me that it applied specific standards to measure the academic progress of its students."

In its current submission, Respondent argues that neither the AJ's decision nor my decision makes direct reference to the evidence submitted as Respondent's Exhibit RR-18,

¹ Respondent's submission is filed nearly six months after my decision was issued, and does not come in the form of a motion. Even so, I will consider the filing a motion for reconsideration based on the substance of the arguments raised and the relief requested.

² On May 12, 2011, the office of Federal Student Aid (FSA) filed a response opposing Respondent's request because it is untimely, provides insufficient basis for reconsideration, and merely reiterates arguments rejected on appeal.

which, in Respondent's view, rebuts Finding 10 by demonstrating that Respondent had procedures for measuring satisfactory academic progress. As FSA notes, this argument tracks precisely the position already asserted by Respondent, and rejected at each stage of administrative review. At any rate, Respondent's request does not serve the purpose of a request for reconsideration, which is to correct manifest errors of law or to present newly discovered evidence.

First and foremost, the Decisions of the Secretary constitute final agency decisions. In this respect, it follows that such decisions counsel against disrupting the finality of the administrative appeal process by offering parties an open invitation to question the Secretary's rulings.³ Indeed, not only is the finality of the Department's administrative review process a hallmark of decisiveness for the Department's administrative review, but the finality of the process follows from the Department's regulations governing the function of the Secretary's review of appeals under Subpart H, which do not provide for an opportunity to seek reconsideration of a Decision of the Secretary.

In addition, although Respondent's request is expressed in the form of a request to correct an error of "omission... regarding Finding 10," Respondent's position hinges on a disagreement over the fact-finding undertaken by Judge O'Hair, which I upheld. As I noted in *In the Matter of Willoughby-Eastlake School of Practical Nursing, supra*, a request for reconsideration may not be used as a tool for: (1) expressing disagreement with my decision, (2) rearguing matters already addressed by my decision, or (3) raising arguments that could have been raised before but were not. More directly, Respondent's assertion that I omitted Finding 10 in my decision is factually incorrect. Finding 10 is directly referenced twice in my decision, and it is clear that I upheld the AJ's reasonable conclusion that despite having the burden of proof, Respondent failed to convince the tribunal that the institution adequately monitored and applied standards of satisfactory academic progress. Accordingly, I find that Respondent's request bears no basis for granting reconsideration or otherwise disturbing my November 12, 2010, decision.⁴

³ See *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 April 14, 2011.)

⁴ In my view, reconsideration may only take place in a rare occurrence exercised as a matter of the Secretary's discretion rather than a party's right or entitlement, and the past practice of the Department is in accord with this view. See *In the Matter of Willoughby-Eastlake School of Practical Nursing, supra*.

ORDER

ACCORDINGLY, Respondent's request is DENIED; Respondent shall pay the sum of \$385,201 to the U.S. Department of Education and \$26,812.73 to student FFEL accounts.

So ordered this 18th day of November 2011.



Arne Duncan

Washington, D.C.

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COMMENTS

The original Decision has been sent to your attention

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