

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

IN THE MATTER OF

Docket No. 02-78-SP

Trocaire College,

Federal Student Aid

Proceeding

Respondent.

Appearances: Michael R. Moravec, Esq., of Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, New York, for Trocaire College

Denise Morelli, Esq., of the Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid

BEFORE: Chief Administrative Law Judge Allan C. Lewis

DECISION

This is an action initiated by the Office of Federal Student Aid of the United States Department of Education (FSA) to recover \$482,313 of alleged ineligible disbursements of Title IV funds. It is based upon a final program review determination in which FSA concluded that (1) Trocaire College improperly disbursed Title IV assistance to students before the eligibility status of a new program was approved by the Secretary and (2) the new program was an ineligible program because the students received compensation while participating in the externship aspect of the program. Based upon the findings of fact and conclusions of law, infra, it is concluded that the United States Department of Education may recover \$482,313.

Trocaire College is a small private, Catholic college sponsored by the Sisters of Mercy. It offered two-year associate degree programs in various areas such as business administration (health care office management, sales & marketing and transfer), liberal arts, massage therapy, and surgical technology as well as one-year certificate programs such as computer office specialist, medical coding, nursing, and office technology. In January 2000, Trocaire added a new certificate program entitled Transportation Technology: Trucking Certificate Program (Program). This certificate program consisted of 28 credit hours. It had 12 weeks of classroom study (21 credit hours) in courses such as transportation operator wellness, basic trucking operations and vehicle systems, and advanced vehicle operations. The classroom study was then followed by an 18-week externship (7 credit hours) that provided practical driving experience. The externship portion of the Program was provided through a contractual agreement with National Tractor Trailer School which, in turn, contracted with individual trucking companies. While participating in the externship, students received compensation from the trucking companies.

Prior to offering the Program, Trocaire failed to apply to the Secretary of the United States Department of Education for approval to add this program to its Title IV eligibility certification. It did, however, communicate with the New York State Department of Education (New York State). Subsequently, New York State registered the Program as it conformed to the standards of registration set forth in Subchapter A of the Regulations of the Commissioner of Education.

As one of a number of conditions for registration, New York State required Trocaire to submit a progress report on the Program. The report was submitted. During that same time period, on July 2, 2001, FSA notified Trocaire that it may be liable for the Title IV funds disbursed to students since it had not obtained approval of its Program from the Secretary of the United States Department of Education. In addition, FSA suggested that Trocaire submit an application to have the Program approved. Sometime thereafter, Trocaire submitted an application for approval of eligibility for the Program.

On September 24, 2001, Trocaire informed New York State that it was discontinuing the Program. As a consequence, a site visit by New York State was never scheduled. Trocaire requested that the termination of the Program be effective January 2002. At the subsequent request of Trocaire, however, the termination was continued until June 2002 when the registration was terminated.

Meanwhile, with regard to the Program's Title IV eligibility, FSA considered Trocaire's application. On May 30, 2002, FSA notified Trocaire that the Program was not eligible for Title IV funding. On July 17, 2002, FSA issued a final program review determination seeking to recover \$482,313 of improperly disbursed Title IV funds.

The issue in this case is whether Trocaire was required to obtain approval of its Program from the Secretary before it disbursed Title IV funds to students enrolled in the program. If such action was required, then Trocaire is liable to the Secretary for the funds it disbursed in contravention of 34 C.F.R. § 600.10 (2000). If Trocaire did not have to obtain the Secretary's approval by virtue of the exception set forth in 34 C.F.R. § 600.10(c)(2), then a second issue arises as to whether the Program satisfied the statutory and regulatory eligibility requirements. If the Program did not satisfy the eligibility requirements, then Trocaire is liable for the Title IV funds disbursed.

An institution may participate in Title IV programs once the Secretary determines that the school meets the statutory and regulatory eligibility requirements and signs the institution's program participation agreement. 34 C.F.R. § 600.10(a)(1). The institution's eligibility extends only to those locations and educational programs, identified in the institution's application, that satisfy the statutory and regulatory requirements as determined by the Secretary. 34 C.F.R. § 600.10(b).

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 enrolled in the program. 34 C.F.R. § 600.10(c)(1).

An eligible institution may forgo the approval process with the Secretary prior to the distribution of Title IV funds to students enrolled in a new program under certain circumstances—

[a]n eligible institution . . . does not have to apply to the Secretary to have that additional program designated as an eligible program . . . if the new program—

(i) Leads to an associate, baccalaureate, professional, or graduate degree; or
(ii)(A) Prepares students for gainful employment in the same or related recognized occupation as an educational program that has previously been designated as an eligible program at that institution by the Secretary; and

(B) Is at least 8 semester hours, 12 quarter hours, or 600 clock hours.^[1]

34 C.F.R. § 600.10(c)(2).

Trocaire argues that its Program leads to an associate or baccalaureate degree under subpart (c)(2)(i). It maintains that credits from its Program may be transferred to, and accepted as, elective credits in associate or degree programs and, therefore, its Program "leads to" an associate or baccalaureate degree. This argument has no merit. The phrase "leads to" is used in the sense of the degree or certificate that is awarded for the completion of the program in question. 59 Fed. Reg. 22,330 (1994). Though credits from the Program may be accepted in an advanced degree

program, this does not change the nature of Trocaire's Program. Trocaire's Program is a vocational/certificate program, not an associate or baccalaureate degree program. As such, subpart (c)(2)(i) is not applicable.

Next, Trocaire asserts that its Program satisfies subpart (c)(2)(ii), the provision that addresses vocational/certificate programs. Here, the test is whether the Program trains students for an occupation that is related to an occupation taught in other programs offered by the school.

Initially, Trocaire proposes a broad view of the training offered under its Program, *i.e.* "the Program trains students not only to become commercial truck drivers but for other positions in the trucking industry, including such positions as terminal manager, operations manager, dispatcher, logistics planner, etc." (Br. 5.) Then, it relies upon an after-the-fact statement from New York State to the effect that the Program was in a similar field as programs previously approved by New York State and within the College's mission. (Br. 6.) Lastly, it adds that Trocaire's programs are similar in that they have a strong vocational orientation, training people for specific careers including marketing, distribution, purchasing, business and industrial management technologies, secretarial technologies, hotel and restaurant management technologies, and business and commerce technologies.

Based upon the facts, Trocaire's Program trains students for the occupation of commercial truck driver. This occupation is not similar to the occupations taught in the other certificate programs offered by Trocaire, *i.e.* computer office work, diagnostic medical sonography, echocardiography, massage therapy, medical billing, medical coding, medical office technology, medical transcription technology, nursing, and office technology. *Id.* at 22,330. As such, Trocaire's Program does not satisfy subpart (c)(2)(ii) of the regulation.

Trocaire argues that the Program trains students for other positions in the trucking industry such as terminal manager, operations manager, dispatcher, logistics planner. Even if the record supported such a factual allegation, which it does not, the argument has no effect on the outcome. Subpart (c)(2)(ii) requires, *inter alia*, that the related occupation must be an occupation that is taught under an existing program of the institution. Here, the occupations taught by Trocaire's programs are not related to the occupation of terminal manger, operations manager, dispatcher or logistics planner.

Next, Trocaire asserts that New York State reached a conclusion that Trocaire's Program "was in a similar field as programs previously approved and within the College's mission." (Br. 6.) New York State's statement does not advance Trocaire's position. New York State stated, in effect, that Trocaire's Program was in a subject field of Transportation and Public Utility Technologies and that field was within the discipline area of Business under its classification system. According to New York State, Trocaire's other programs were assigned to other subject fields within the same discipline area of Business. (Ex. R-2.) Thus, there is no relationship between the Program and Trocaire's other programs at the subject field level. While the Program and the other programs share the same discipline area, this category is so broad as to be meaningless in the present case.

Lastly, Trocaire urges that its programs are similar in that they have a strong vocational or business orientation, training people for careers in various business related occupations. Subpart (c)(2)(ii) requires a much closer relationship, namely that the occupations of the program in question and the institution's existing program are the same or similar. Hence, Trocaire's argument is not persuasive.

In summary, it is concluded that Trocaire's Program does not satisfy either subpart (c)(2)(i) or (c)(2)(ii) of 34 C.F.R. § 600.10 and, therefore, Trocaire was required to obtain Secretarial approval for its Program prior to distributing any Title IV funds to students enrolled in the program. In light of its failure to obtain such approval, it is liable for the funds disbursed in the amount of \$482,313. In view of this determination, it is not necessary or appropriate to address the other issue raised in the final program review determination letter regarding the ineligibility of the Program.

ORDER

On the basis of the foregoing findings of fact and conclusion of law, and the proceedings herein, it is HEREBY ORDERED Trocaire College immediately and in the manner provided by law pay to the United States Department of Education the sum of \$482, 313.

Allan C. Lewis
Chief Administrative Law Judge

Issued: April 4, 2003
Washington, D.C.

SERVICE

On April 4, 2003, a copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

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[\[1\]](#) Any institution that proceeds under this exception does so at its financial peril as 34 C.F.R. § 600.10(c)(3) provides that—

[i]f an institution incorrectly determines under paragraph (c)(2) of this section that an educational program satisfies the applicable statutory and regulatory eligibility provisions without applying to the Secretary for approval, the institution is liable to repay to the Secretary all HEA program funds received by the institution for that educational program, and all the title IV, HEA program funds received by or on behalf of students who were enrolled in that educational program.