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

In the Matter of	**Docket No. 05-01-SP**
WRIGHTCO TECHNOLOGIES TECHNICAL TRAINING INSTITUTE,	Federal Student Aid Proceeding
Respondent.	PRCN: 20040323485

Appearances: Leslie H. Wiesenfelder, Esq., Jonathon G. Glass, Esq., and Aaron D. Lacey, Esq., of Dow, Lohnes & Albertson, Washington, D.C., for Wrightco Technologies Technical Training Institute.

Russell B. Wolff, Esq., of the Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Wrightco Technologies Technical Training Institute (Wrightco) is a private, for profit postsecondary institution located in Ebensburg, Pennsylvania, providing varied certificate programs of study. It is accredited by the Accrediting Commission of Career Schools and Colleges of Technology, is licensed by the Pennsylvania Department of Education State Board of Private Licensed Schools, and is eligible to participate in the Federal Student Aid Programs that are authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* Within the U. S. Department of Education (ED), the Office of Federal Student Aid (FSA) is the organization that has cognizance over and administers these programs.

On July 27, 2004, Institutional Reviewers from FSA's Philadelphia Case Management Team notified Wrightco that they suspected that it had disbursed Title IV funds to students at ineligible locations. In that notification, FSA requested that Wrightco provide a list of all the locations where it had disbursed Title IV funds to students during the period November 6, 2000 through July 27, 2004. After it received such information, on October 20, 2004, FSA issued a Final Program Review Determination (FPRD) finding that in violation of 34 C.F.R § 600.20,

Wrightco wrongfully disbursed $185,867 in Title IV funds to students who were enrolled in programs at ineligible locations. Wrightco's appeal of that determination is the subject of this proceeding.[1]

The pertinent facts of this case do not appear to be complicated. Wrightco became eligible to participate in Title IV programs on November 6, 2000. In its eligibility request, Wrightco notified the Secretary that it was also providing its programs at eight remote sights and these sights were included in the Secretary's approval. Subsequently, Wrightco established courses at ten additional locations through agreements with the host institutions.[2] Within that group, eight were independently eligible institutions while two were not. According to each of the respective agreements, Wrightco was required to provide the instructors and all of the instructional material while the host institutions were to provide the facilities. Wrightco took no action to notify ED of these arrangements and obviously did not request the Secretary to approve them. After learning about the expanded course offerings, FSA informed Wrightco that the arrangements were violative of its eligibility -- upon that notice, Wrightco ceased providing those courses at the remote sites. In due course, the FPRD was issued seeking the return of all Title IV funds disbursed to students in these courses.

I begin my consideration of these issues by noting that this proceeding is governed by regulations promulgated under Subpart H of the general provisions. 34 C.F.R. Part 668. It is well established that in a Subpart H -- audit and program review proceeding, the institution carries the burden of proving by a preponderance of the evidence that the Title IV funds in issue were lawfully disbursed. In accordance with 34 C.F.R. § 668.116(d), to sustain its burden, an institution must establish, that (1) the questioned expenditures were proper and (2) the institution complied with program requirements. In that vein, it has been consistently held that the remedy available to FSA under Subpart H is contractual in nature and allows only for the recovery of provable losses. *See, e.g. In the Matter of Avelon Beauty College,* Docket No. 04-24-SP, U.S. Dep't of Educ. (December 29, 2004) (On Appeal to the Secretary); *In the Matter of Macomb Community College,* Docket No. 91-80-SP, U.S. Dep't of Educ. (Final Decision June 28, 1993).

As indicated above, to become eligible to participate in the Title IV programs, an institution must apply to ED for approval. 34 C.F.R. § 600.10. ED, as the responsible agency charged with oversight over the Title IV programs, reviews an applicant's compliance with the various prerequisites for approval. As applicable to the issue before me, the applicant must list, among many other things, the locations at which it would be offering programs. The Secretary, as the approval authority, approves the institution's participation in Title IV as well as its locations. Further, there is a continuing requirement to notify the Secretary whenever the institution wishes to expand its offerings under certain circumstances.

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[1] Wrightco admits that two students attended institutions that were not eligible to participate in Title IV and, therefore, agrees to return the $4,248 disbursed for them.

[2] Significantly, at the time of the actions giving rise to the FPRD, Wrightco was only provisionally certified to participate in Title IV programs, and had been placed on the reimbursement system of receiving Title IV funds.

FSA argues that because the students at issue here attended classes at additional locations that were not approved by the Secretary, Wrightco violated 34 C.F.R. § 600.20. Under § 668.20, an institution that wishes to add a location at which it offers 50% or more of an educational program must apply to the Secretary for approval if, among other things, the institution is provisionally certified to participate in the Title IV programs or it receives its funds under the reimbursement or cash monitoring payment method. Further, if the institution fails to apply to the Secretary for approval, it is liable for the return of all Title IV funds it disbursed at that location. *See* 34 C.F.R. § 600.20 (f)(5).

Wrightco, however, posits that this case does not involve additional unapproved locations; rather, it asserts that the subject students attended either eligible programs at eligible institutions under valid consortium agreements pursuant to 34 C.F.R. § 668.5(a), or attended an eligible program at an ineligible institution under a proper written arrangement pursuant to 34 C.F.R. § 668.5(c). Under 34 C.F.R. § 668.5 (a), if an eligible institution contracts with another eligible institution under which the other institution provides all or part of the educational program of students enrolled in the former institution, the Secretary considers that educational program to be eligible. Also, under 34 C.F.R § 668.5 (c), if an eligible institution contracts with an ineligible institution, the ineligible institution can only provide a limited portion of the program in order to continue to maintain program eligibility. Wrightco argues that since the agreements entered into between Wrightco and the other institutions are valid consortium or contractual agreements, the provisions of 34 C.F.R. § 668.5 (a) or (c) apply and, as a result, the proscriptions of 34 C.F.R. § 600.20 do not.

In response, FSA asserts that the agreements entered into by Wrightco were not valid agreements. Regardless of whether the agreements between Wrightco and the other institutions may be enforceable as contracts, they must satisfy the requirements of 34 C.F.R. § 668.5 in order to be possible exceptions to the proscriptions against failing to apply for approval of additional locations.[3] To make such a determination, we must examine the wording of § 668.5 in detail.

> § 668.5 **Written arrangements to provide educational programs.**
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> (a) *Written arrangements between eligible institutions.* If an eligible institution enters into a written arrangement with another eligible institution, . . . **under which the other eligible institution . . . provides all or part of the educational program of students enrolled in the former institution,** the Secretary considers that program to be eligible. . . . (Emphasis added)

There is no need for any sophisticated regulatory interpretation here -- all that is required is a straightforward reading of the provision. It is abundantly clear what is intended in § 668.5(a) is that the institution with whom the contract is made will provide "all" or "part" of the educational program. Although Wrightco contends that § 668.5 (a) should be interpreted to mean that "the

[3] An open question is, since neither 34 C.F.R. § 600.20, nor 34 C.F.R. § 668.5 refers to the other, how do the two interface? One logical way it seems that the two can be read together is that when it is complied with, § 668.5 provides an exception to the limitations that would, otherwise, apply under § 600.20.

other eligible institution" is not required to provide any of the programs, that interpretation is an unacceptable stretch of the regulatory provisions. Also, Wrightco's attempt to claim that the students attending the subject programs were dually enrolled, or to cast itself as the "other eligible institution" so as to avoid the fact that it is providing the entire program, is factually unconvincing. What is abundantly clear is that Wrightco is not the other institution and that the true other institutions are providing "none" of the program under the contractual scheme that Wrightco has established. It is patently obvious here that what Wrightco is contracting for is the use of space while it continues to provide "all" of the educational program. Without any doubt, the agreements do not meet the requirements of 34 C.F.R. § 668.5.[4] This situation is exactly what the provisions of 34 C.F.R. § 600.20 were meant to regulate -- a provisionally certified school on a reimbursement payment schedule expanding its programs to additional locations without informing the Secretary. Once I make the determination that 34 C.F.R. § 600.20 is applicable, a violation is apparent since Wrightco clearly did not obtain Secretarial approval of its additional locations.

Wrightco also defends that it was informed by FSA employees that the system they were establishing was in compliance with the regulations. Even if it could prove that was so, such informal advice could not effectively overrule the regulatory provisions. I find it somewhat troubling that despite the fact that in its application for eligibility Wrightco did list eight remote locations where its programs would be delivered, and the Secretary approved them, Wrightco took no such action relative to the additional locations. It is obvious that Wrightco was aware of the reporting requirements, yet it never adequately explains why the additional locations were not included in the initial notice or at some later time.

In the past, I have often observed that in a Subpart H proceeding, like the current appeal, FSA's recovery is meant to compensate it for the damages that it suffered and, that absent any such damages, no recovery should be ordered. Stated in another way, I have recognized that some violations may be only technical in nature and result in no actionable harm. Here, unlike the situation that exists in most cases, wherein I am required to calculate the extent of the damages, I am required to order a recovery because my discretion to determine the extent of damages has been circumscribed. As a general rule, I am required to follow the regulations and cannot waive them or rule them to be invalid. See 34 C.F.R. § 668.117 (d). This applies directly in the present proceeding, since when I find that Wrightco has violated the notice and approval provisions contained in 34 C.F.R § 600.20, I am specifically required to order the return of all of the Title IV funds disbursed to students enrolled in the affected programs and locations by the provisions of 34 C.F.R. § 600.20 (f)(5).

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Wrightco Technologies Technical Training Institute pay to the United States

[4] The same analysis applies equally to the application of the provisions of 34 C.F.R § 668.5 (c) when the situation involves agreements between eligible schools and ineligible institutions to provide a portion of an eligible program.

Department of Education the sum of $185,867 for its Final Program Review Determination Letter demand relative to the issue of ineligible locations.

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Ernest C. Canellos
Chief Judge

Dated: August 16, 2005

SERVICE

A copy of the attached decision was sent to the following individuals by certified mail:

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