DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: San Jose City College
Docket No. 78-48
Decision No. 61

DATE: July 3, 1979

DECISION

This case involves an appeal by San Jose City College (grantee) dated June 23, 1978, from the determination of the Deputy Commissioner, Bureau of Higher and Continuing Education, Office of Education, disallowing $37,735 of a total of $231,949 awarded to grantee to conduct a Veterans' Cost-of-Instruction Program in fiscal years 1974 and 1975. The program regulations, promulgated pursuant to Section 420 of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070e-1(e)), after the fiscal year 1974 grant was awarded, permit an institution to use for instructional expenses in academically related programs of the institution any funds which are not needed to fulfill certain program requirements. 45 CFR 189.17(a). The $37,735 of grant funds expended by grantee for such instructional expenses was disallowed on the ground that grantee had not implemented special education programs for veteran students as required by 20 U.S.C. 1070e-1(c)(1)(B)(i) and corresponding regulations at Part 189 of Title 45 of the Code of Federal Regulations.

Grantee took the position, in its response to the audit report on which the disallowance was based and in its application for review by the Board, that its existing remedial courses and counseling services (including the administration of placement tests and other special tests), which were available to all students including veterans, together with two tutorial services specifically designed for veterans, adequately served the needs of veterans and fulfilled the requirement for special education programs. The audit report stated, however, that grantee's "basic remedial classes...are not comparable to a special education program designed specifically to assist veterans." OE's response to the appeal simply cited various provisions in the regulations to support the disallowance.

On January 8, 1979, the Board Chairman issued an Order to Show Cause in this case. The Order took OE's position to be that a separate special education program limited to veterans only was required. It stated that the applicable statute and regulations neither specifically authorized nor specifically prohibited the use of an existing special education program to satisfy program requirements, and directed the parties to show cause in writing why the appeal should not be either denied or granted on one ground or the other. The Order also took note of the fact, reported by the auditor, that grantee had prepared but never implemented a proposal for a separate special education program for veterans only. The Order stated that, even if it is determined that the use of an existing special education program was authorized by law, it might not have been proper in this case as a matter of fact if grantee had made a determination that a separate program was necessary to meet the needs of veterans. It asked grantee to furnish certain information relating to its proposal for a separate special education program, and directed the parties to show cause why the appeal should not be denied on the ground that grantee, having determined that a special education program was necessary to meet the needs of educationally disadvantaged veterans, did not implement it.

OE's response to the Order denied that its position was that separate special education programs for veterans only were required. OE asserted that veterans have "educational deficiencies quite different by age and experience from the needs of...regular students" and that therefore an "individualized assessment" of "the specific educational needs of veteran students" is required in order to determine if their needs can be met by existing programs. It stated that the disallowance was based on the auditor's finding that "such assessment had not formally occurred." OE further stated that grantee "did in fact have some reservations as to the adequacy of its existing special education programs and so indicated to the authorized auditor..." and concluded that the appeal should be denied on the ground that "the statute and regulations call for and establish criteria for assessment and should be evidenced by the grantee and documentation forwarded showing that the grantee did assess the veterans' needs and fulfilled these needs by its educational programs."

OE's response did not point to any provisions in the statute or regulations which establish criteria for an assessment of veterans' needs. Its response also did not specify in what respects it found the testing and counseling process described by grantee, which is apparently a standard technique used by educators, deficient as a means of assessing veterans' needs.

The Board's recent decision in University of Arizona, Docket No. 78-11, Decision No. 58, June 19, 1979, dealt in part with some of the same issues raised in this case. In that case, it also appeared initially that the basis of the disallowance was grantee's use of existing remedial

classes to meet the requirement of the Veterans Cost-of-Instruction program for special education programs, and OE also later clarified its position as being that separate classes for veterans were not required if an assessment of the needs of veteran students showed that existing classes adequately met those needs. The Board there held that not only were separate remedial classes for veterans not required, but also there was no requirement in the program legislation or implementing regulations for an assessment of veterans' needs in connection with the special education programs.

Although there is no requirement for an assessment of veterans' needs to justify the use of existing classes, there is nevertheless an argument that if grantee determined that separate classes were better suited to veterans' needs, grantee should be required to make such classes available. We need not decide that question, however, since grantee's response to the Order to Show Cause indicates that it did not in fact make such a determination. Grantee's response states that, while its Office of Veterans' Affairs proposed a separate special education program for veterans only, that program was virtually the same as its existing program of remedial courses and was proposed solely to enable veterans to maximize their benefits under the G.I. bill, since the classes were to be offered on a noncredit basis and thus would not count against such benefits. Grantee further noted that a special 3-unit course which was provided only for veterans in the spring of 1974, consisting of units in College Study Techniques, Career Planning, and Introduction to College, was dropped the next semester because grantee felt that the course did not provide benefits to veterans which could not be provided in other classes which were open to all students.

In view of grantee's explanation of the nature and intended purpose of its proposal for a separate special education program for veterans only, there appears to be no need to pursue the question whether grantee would have satisfied the program requirements if it had offered an adequate special education program but not the one it thought best suited to the needs of its veteran students. OE's statement regarding some reservations having been expressed by grantee as to the adequacy of its existing program appears to refer to an admission made to the auditor by a college official, who understood the auditor to mean that a special education program must be restricted to veterans, that grantee did not have such a program. We agree with grantee that this admission should not be taken as a concession that its existing program did not meet the needs of veteran students.

Conclusion

We find that grantee's use of its existing remedial courses and counseling services, together with two tutorial services specifically designed for

veterans, fulfilled the requirement for special education programs for veterans. The appeal is granted in full.

/s/ Manuel B. Hiller, Panel Chairman

/s/ Thomas Malone

/s/ Malcolm S. Mason