

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Kentucky Department for Human Resources                      DATE: March 31, 1981  
Docket No. 79-241-KY-HD  
Decision No. 157

DECISION

On December 21, 1979, the Kentucky Department for Human Resources (State) filed an application for review of the November 20, 1979 disallowance by the Office of Human Development Services (Agency) of \$153,840 in Federal financial participation (FFP) for expenditures made under contract with Northern Kentucky University (NKU) for Title XX training for the period July 1, 1977 to June 25, 1979. After being granted an extension of time, the Agency filed a response to the appeal on May 16, 1980. The Board issued an Order to Show Cause on February 26, 1981. The Agency was not required to respond, and the State chose not to respond.

The Agency determined that FFP was not available under 45 CFR 228.82 because the University's social work program had not been accredited by, had pre-accreditation status from, or applied for accreditation by the Council on Social Work Education (CSWE) during the period in question. NKU submitted an application for accreditation in April 1976 and was denied accreditation by CSWE on January 4, 1977. NKU did not appeal the denial of accreditation, and no reapplication was submitted until June 25, 1979.

Our decision is based upon the application for review, response to the appeal, and Order to Show Cause. The Board also examined and considered the file in a related case, Kentucky Department for Human Resources, Decision No. 92, April 28, 1980.

Relevant Statutory and Regulatory Provisions

Under Title XX of the Social Security Act, a state may receive Federal reimbursement for 75% of the costs of personnel training and retraining directly related to the provision of certain welfare services (42 USC 1397a(a)(1)). The implementing regulations can be found at 45 CFR 228.80 et seq. Section 228.82(a)(2), the section relied upon by both parties, states that--

- (a) FFP is available in payments for training furnished under grants to educational institutions, if all conditions specified in this section are met...

- (2) Grants are available only to post secondary, undergraduate and graduate educational institutions and programs that have been accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. A specialized program for which there is a specialized accrediting body shall be accredited by, have pre-accreditation status from, or have applied for, accreditation by such body...

Both parties agree that the appropriate accrediting body in this case is CSWE.

#### Discussion - In General

The State admits that NKU's social work program was denied accreditation in January 1977 but argues that the University continued in a pre-accreditation and application for accreditation status. Through a consultant recommended by CSWE, the University followed through "on recommendations for development required to meet the criteria on candidacy." (Application for Review, p. 1.) The University resubmitted an application in June 1979.

The relevant regulations do not define the terms "application for accreditation" or "pre-accreditation status." Since HHS has recognized CSWE as the appropriate specialized accrediting body and has not defined the terms in question, we must look to CSWE's policies, procedures and criteria in order to determine whether the University's status met the requirements of the regulation.

The CSWE documents submitted by both parties describe its accreditation process. Before an application for accreditation is submitted by a school, the school is advised to employ a consultant from a list suggested by CSWE, and a self-study is to be written. The self-study is submitted along with the application for initial accreditation. CSWE then decides whether the school's program is sufficiently developed to warrant a visit by a representative of the Commission on Accreditation (if candidacy status seems indicated) or a site visit by an evaluation team (if the program is eligible for initial accreditation). From the material submitted in the application, the Commission determines whether the program is eligible for initial accreditation or for candidacy. Candidacy is a formal, pre-accreditation status which indicates that a program is making satisfactory progress toward qualifying for accreditation. It may not be possible to complete the accreditation review during the academic year in which the application was received. If accredited status is awarded during the succeeding academic year, such status would be made retroactive to the academic year during which the application was submitted.

In 1976, NKU applied for accreditation which was denied in January 1977. There is nothing in the record to indicate that CSWE did not consider its process as to that application to be complete.

The State uses the term "application status" in describing the period in question (letter dated August 21, 1979 from Commissioner Charles F. Cain to L. Bryant Tudor, Regional Administrator). That term does not appear in either the relevant regulation or CSWE documents. There is nothing in the record that indicates that CSWE considered NKU's application to be still pending after January 4, 1977.

Alternatively, the State asserts that NKU had pre-accreditation status during the period in question. From the CSWE documents submitted by both parties it appears that CSWE's "candidacy" status could be considered pre-accreditation status within the meaning of 45 CFR 228.82(a)(2). The State has not asserted that NKU ever carried formal "candidacy" status from CSWE, however. The mere fact that NKU was seeking advice on accreditation is not sufficient to indicate candidacy status. In Decision No. 92, in analyzing a similar situation, the Board stated (page 5):

For the Board to find that KSU [Kentucky State University] had pre-accreditation status on this basis, however, would mean that FFP might be available starting at a point when a school merely requests assistance from the CSWE to explore the possibility of accreditation or requests an application for accreditation. The term used in the regulation [pre-accreditation status] must connote some sort of formal status from the accrediting body. Unless it is interpreted in this light, HEW might have to provide FFP for an indefinite period of time for an institution which has no real expectation of achieving accreditation.

Since NKU did not carry formal candidacy status during the period in question, the Board can not find that NKU had pre-accreditation status.

#### September 1, 1977 - June 30, 1978 Contract

In claiming FFP for the period after January 4, 1977, in spite of the denial of accreditation, the State argues that it relied heavily on a Region IV "Interpretation Guide." That Guide states that if there is a denial of accreditation, "FFP would continue to be available until the end of the contract year in which that determination is made." (Guide, Section D-4203.) Reliance on this Guide can not alter the disallowance which begins on July 1, 1977. The effective date of the first contract of which the Board has notice is September 1, 1977. There was no contract in effect at the time that accreditation was denied. In addition, the State itself admits that the Guide was made available to the State after October 1977 (which is after the date of the effective date of the first

contract), and that it was in draft form and appeared to be for discussion purposes (letter dated August 21, 1979 from Commissioner Cain to Mr. Tudor).

July 1, 1978 - June 30, 1979 Contract

The Agency's disallowance covers the period of July 1, 1977 to June 25, 1979, the date of the reapplication for accreditation. The State has submitted a letter from CSWE to NKU dated November 11, 1980, stating that the University program had been accredited and that accreditation is "effective the end of the academic year 1978-79." (Emphasis added) In effect, CSWE has made accreditation of NKU effective back to the period of the reapplication for accreditation. The disallowance is consistent with the regulation and with CSWE's accreditation action.

During the period in question, therefore, NKU's social work program was not accredited by, did not have pre-accreditation status from, and had not applied for accreditation by CSWE.

Decision

For the reasons stated above, we sustain the disallowance of FFP for expenditures made under contract with Northern Kentucky University in the full amount of \$153,840.

/s/ Cecilia Sparks Ford

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz, Panel Chair