

DEPARTMENTAL GRANT APPEALS BOARD  
THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DATE: July 26, 1974

Re: Kent State University, Kent, Ohio Docket No. 10,  
Grant No. 44-P-25119/5-10 and Grant No. 44-P-25119/5-11  
Decision No. 3

This is an appeal pursuant to 45 CFR Part 16 from the action of the Social and Rehabilitation Service on or about September 12, 1973, in disallowing the carryover of funds from a training grant to appellant for use as additional authorization in a new grant year and a concomitant denial of a request for the reallocation of unused stipends to support additional students in the continuation year of the same training grant. The decision to follow is based upon the documents submitted to the Departmental Grant Appeals Board. The undersigned members of the Board have been designated as a panel of three for the disposition of the instant case.

BACKGROUND

Kent State University, through appropriate officials, made three requests to the Acting Regional Commissioner, Social and Rehabilitation Service (SRS), DHEW, concerning the tenth and eleventh years of a training grant (Exhibit #1). Under training grant No. 44-P-25119/5-10, approximately \$20,000 remained as unexpended funds from the 1972-73 award. It was specifically requested that these unexpended funds be carried over to the next continuation grant year, grant No. 44-P-25119/5-11, to be used for (a) "a badly needed extra professional staff person, and/or (b) stipends for deserving students already in the program and unable to complete the program without financial aid."

The second request was for a budgetary change in the continuation grant budget, 44-P-25119/5-11, which would allow the support of one professional

at 100% of his FY 1973 salary instead of the approved budgetary items for the support of two professionals at 50% each of the total FY 1973 salary.

Thirdly, in view of the fact that only four trainees out of a total of 12 approved had reported for year 11 of the continuation grant, 7 stipends at \$1,332 each and 1 stipend at \$3,400 were requested for the appointment of trainees not initially identified or approved in the FY 72-73 training grant application.

The Acting Regional Commissioner, Region V, SRS, DHEW, in a letter sent on or about September 12, 1973, to the Coordinator, Rehabilitation Counseling Program, Kent State University (Exhibit #2), denied the requests for carryover of the unexpended funds and for the use of unused stipends for the support of additional trainees in the continuation year of the subject grant. Approval was granted, however, for the second request cited earlier.

In a letter dated October 15, 1973, (Exhibit #3) Kent State University submitted an appeal to the DHEW Departmental Grant Appeals Board concerning the aforementioned decisions of SRS.

#### FACTS

The circumstances of this appeal are unique in that the decisions made by the SRS in this case were pursuant to a policy determination reflected in the language of the President's FY 1974 budget. The policy required the SRS to begin an orderly termination and phaseout of its direct training grant programs to institutions of higher learning (Exhibit #4). The requests made by Kent State University therefore

occurred at a time when policies emanating from the phaseout were in effect rather than those under pre-existing conditions.

In refusing the requests for carryover of unexpended funds and the use of unused stipends to support additional students (Exhibit #2), the SRS Regional Commissioner, Region V, cited two DHEW and SRS training grant phaseout policies that led to these decisions. The first policy cited stipulated that "Unobligated funds from prior budget periods cannot be used as additional authorization in the current approved budget." The second stated that "Traineeship funds for the academic year 1973-1974 are available only to students who received support under the previously funded grant. No other students can be supported. In the event that previously designated eligible students do not enroll, drop out before completion of training, or require a lesser amount of support, such available traineeship funds cannot be used for support of students not initially eligible."

Additional information was requested from the SRS to show specific policies developed in response to the phaseout determination and the manner by which such policies were disseminated to grantee institutions. A notice of the phaseout decision was mailed to all grantees and concerned state administrators on January 31, 1973 (Exhibit #4). This notice specified in Section 1a that "Traineeship support be limited to funding students already in a program. No new stipends will be awarded." No reference to a revised carryover policy appears in the notice. In addition to the general notice sent to grantee organizations, SRS provided several internal memoranda to show managerial responsiveness to the phaseout directive. In a memorandum dated January 26, 1973 (Exhibit #5), the

Administrator, SRS, requested the Regional Commissioners and other personnel to effect a temporary freeze on all Direct Training Grant monies pending a final expenditure plan for remaining FY 1973 funds. This document was further clarified and expanded in a memorandum dated February 21, 1973, from the Acting Administrator, SRS, to Regional Commissioners and other administrative officers. This memorandum (Exhibit #6) stated in part that "In addition to the freeze on funds from the Fiscal Year 1973 appropriation, it is the intent of the language in the January 26 memorandum that no additional unobligated funds from prior year appropriations be authorized for the purpose of increasing the current Federal approved budget." SRS Regional Commissioners, in a memorandum from the Acting Administrator, SRS, dated April 16, 1973 (Exhibit #7), were given more detailed instructions on the SRS approved policy for the phaseout of training grants. Sections 3 and 5, in particular, specify the policies which were the basis for SRS disapproval of the requests from Kent State University.

The Associate Regional Commissioner for Management restated the phaseout policies for SRS training grants in a letter to Kent State University dated October 10, 1973 (Exhibit #8). In addition to restating the policy on the use of trainee stipends, item 2 in the letter states: "Rebudgeting of funds for faculty support within the current grant is permitted only through changes in the current year's management of the grant, (pp.34-35, SRS Grants Administration Policies)."

ARGUMENTS

The appellant maintains (Exhibit #3) that the refusal of SRS to allow carryover of funds from grant No. 44-P-25119/5-10, and the reallocation of trainee stipends for the new grant year, grant No. 44-25119/5-11, represents the imposition of unreasonable and arbitrary policy which prevents the University from offering a program of increased quality and the result of a higher attainment of the Federal mission. The appellant also alleges that the policies and regulations cited by SRS as a basis for disapproving their requests was not communicated to responsible officials at Kent State University. It was contended that, in view of an expectation of Federal budgetary cutbacks, a balance of unexpended funds from the FY 1973 grant was a planned realization and resulted from prudent financial management and the assumption that carryover policies would have allowed the utilization of these monies. Otherwise, Kent State University officials state, these unexpended funds would have been used to increase the quality of the program during the budget year in which they become available.

The SRS, DHEW, denied the relevant requests from Kent State University on the basis of policies developed in respect to the decision to phase out direct training grants (Exhibits 2,4,6,7, and 8). The Acting Regional Commissioner, SRS, Region V, maintains (Exhibit #9) that the granting office "has a cardinal duty to implement and administer those policies in a manner equitable to all grantees."

DISCUSSION

The SRS has shown that policies developed in response to the administrative decision to phase out training grants substantiate their

refusal to allow the carryover of funds from grant No. 44-P-25119/5-10, and the use of unused stipends to support additional students in the subsequent continuation year of the same grant, No. 44-P-25119/5-11. On purely technical grounds, the request to carry over funds from one grant year to another is not appealable since such determination is a pre-award action.

Irrespective of the essential merit of the request by appellant to reallocate trainee stipends for new students, the phaseout policy is clearly prohibitive of such actions. This policy was widely disseminated to grantee institutions and concerned state administrators. Even if there had been an absence of communication to the grantee institutions, an ex post facto revelation of the subject policy would be controlling in view of the mandate of the President to terminate training programs. Several of the documents (Exhibits 5,6, and 7) outlined internal operational policies with regard to the phaseout and many of the details apparently were not transmitted to grantee institutions. This is not considered to be relevant since the general policy had been properly enunciated and communicated to grantees.

DECISION

The appeal is denied in full.

/s/ Thomas E. Malone, Chairman

/s/ David Dukes

/s/ Bernice Bernstein