

DATE: 07-18-90

CITATION: VAOPGCPREC 53-90
Vet. Aff. Op. Gen. Couns. Prec. 53-90

TEXT:

Subject: School Liability-Reporting Requirements

(This opinion, previously issued as General Counsel Opinion 7-77, dated November 22, 1976, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

QUESTIONS PRESENTED:

(1) If an eligible student ceases pursuit without officially withdrawing from a course, may a school be liable for any portion of the resulting overpayment if the school's change of status report is received by the Veterans Administration within 30 days after the certifying official knew of the change, which may not be until the end of the term?

(2) Pursuant to an annual inspection, may schools be granted a one-year certificate which, in effect, would guarantee that the school not be held liable for administrative delays and clerical errors since we have found progress policy and reporting procedures to be satisfactory?

COMMENTS:

Section 1784(a) of title 38, United States Code, which is pertinent here, reads as follows:

"(a) Educational institutions shall, without delay, report to the Administrator in the form prescribed by him, the enrollment, interruption, and termination of the education of each eligible person or veteran enrolled therein under chapter 34, 35, or 36." (Emphasis supplied.)

Section 1785 of title 38, United States Code, which is also pertinent here, reads as follows:

"Whenever the Administrator finds that an overpayment has been made to an eligible person or veteran as the result of (1) the willful or negligent failure of an educational institution to report, as required by this chapter or chapter 34 or 35 of this title and applicable regulations, to the Veterans' Administration excessive absences from a course, or discontinuance or interruption of a course by the

eligible person or veteran, or (2) false certification by an educational institution, the amount of such overpayment shall constitute a liability of such institution, and may be recovered in the same manner as any other debt due the United States.

Any amount so collected shall be reimbursed if the overpayment is recovered from the eligible person or veteran. This section shall not preclude the imposition of any civil or criminal liability under this or any other law." (Emphasis supplied.)

The portions of VA Regulation 14203, pertinent to the first question raised, read as follows:

"14203 (s 21.4203). REPORTS BY SCHOOLS--REQUIREMENTS

"(A) General. Educational institutions are required to report promptly the entrance, reentrance, change in hours of credit or attendance, interruption and termination of attendance of each veteran or eligible person who is enrolled....
* * * * *

"(D) Interruptions and Terminations. When a veteran or eligible person interrupts or terminates his or her training for whatever reason, including unsatisfactory conduct or progress, this fact must be reported promptly to the VA.

"(1) If the course does not lead to a standard college degree, the school shall submit the report required by this subparagraph and subparagraph (C) as follows:

"(a) If the quarterly certification of attendance that is normally required for the student is due to be filed during or immediately after the end of the month in which the change in status occurs the report will be included on the quarterly certification.

"(b) If no quarterly certification is due during the month in which the change of status occurs, the school shall report the change in status to the VA, during or immediately after the end of the month in which the change occurred, including a certification of the absences of the student since the last quarterly certification was filed or the course began.

"(2) If the course leads to a standard college degree the school will initiate a report of the change in the status of the student during or immediately after the end of the month in which the change occurs. The official date of change of status or interruption or termination shall be in accordance with VA Regulation 14253(D) or 14254(C)(7)." (Emphasis supplied.)

The portions of VA Regulation 14009, also pertinent here, read as follows:

"14009 (s 21.4009). OVERPAYMENTS--WAIVER OR RECOVERY

"(A) General. The amount of an overpayment of educational assistance allowance or special training allowance on behalf of a veteran or eligible person constitutes a liability of the school if it is determined that the overpayment was made as the result of (1) willful or negligent failure of the school to report, as required by VA Regulation 14203 and 14204, excessive absences from a course, a discontinuance or interruption of a course by the veteran or eligible person, or (2) false certification by the school. If it appears that the falsity or misrepresentation was deliberate, no administrative collection may be pursued pending a determination whether the matter should be referred to the Department of Justice for possible criminal or civil action. However, the amount of the overpayment may be recovered from the school by administrative collection procedure when the false certification or misrepresentation is the consequence of an administrative error or a mistake of fact, or where it is determined that no criminal or civil action is warranted. Any amount so collected from the school will be reimbursed if the overpayment is recovered from the veteran or eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law.

"(B) Reporting. If a school is required to make periodic or other certifications, failure to report facts which resulted in an overpayment will be considered prima facie evidence of willfulness or negligence. Similarly, the submission of an incorrect certification as to fact will be considered prima facie evidence of a false certification. In either instance the prima facie showing is subject to rebuttal...." (Emphasis supplied.)

Before turning to your specific questions, we would point out that in an opinion rendered by this office on September 17, 1976, we held that allowing an educational institution 30 days from the date of a veteran's reduction or termination of training is a reasonable period of time and would meet the law's requirement of "without delay." We also held that allowing an educational institution a period not to exceed 30 days from the beginning of a new term to report a veteran's reduction in course load or termination of training or, where applicable, from the end of the school's drop/add period (not to exceed 30 days) to report a veteran's reduction in course load, represents a reasonable period of time.

HELD:

(1) There are many ways in which a school can determine that a student has ceased pursuit of his or her program of education even though he or she has not officially withdrawn. Examples of such methods are attendance records, grading reports, last date on which examination or other papers are filed, last day of activity recorded in the instructor's records, or a statement from the student as to the last date of his or her attendance. Thus, we believe that, with these many potential sources of notice available to the school, a date when a student interrupts or terminates his or her pursuit without officially withdrawing should be

ascertainable and the 30-day rule should be applied as of the date when the school through the exercise of due diligence could have determined that the student was no longer pursuing his or her program.

(2) We do not find any legal authority under which a school could, after the annual inspection, be guaranteed that it would not be held liable for administrative delays or clerical errors where the VA has found its progress policy and reporting procedures to be satisfactory. We believe that each situation must be determined on its individual merits. As a matter of practice, we understand that schools are currently permitted some leeway in the area of clerical errors and administrative delays.

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