DATE: 07-18-90

CITATION: VAOPGCPREC 56-90
Vet. Aff. Op. Gen. Couns. Prec. 56-90

TEXT:

Subject: Combination Correspondence-Residence Courses

(This opinion, previously issued as General Counsel Opinion 1-77, dated July 16, 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.)

QUESTION PRESENTED:

Should VA Regulation 14279 be cancelled and rescinded as being in conflict with sections 1652(b) and 1786(a) of title 38, United States Code?

COMMENTS:

Section 1652(b) of title 38 reads, in pertinent part, as follows:

"(b) The term 'program of education' means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective...." (Emphasis supplied.)

Section 1786(a) reads, in pertinent part, as follows:

"(a)(1) Each eligible veteran (as defined in section 1652(a)(1) and (2) of this title) and each eligible wife or widow (as defined in section 1701(a)(1)(B), (C), or (D) of this title) who enters into an enrollment agreement to pursue a program of education exclusively by correspondence shall be paid an educational assistance allowance computed at the rate of 90 per centum of the established charge which the institution requires nonveterans to pay for the course or courses pursued by the eligible veteran or wife or widow ..." (Emphasis supplied).

The question of combination correspondence-residence training was raised by the Chief Benefits Director in 1972 in connection with the rate of payment to be

made by the Veterans Administration for each of the two segments involved-- correspondence vs. residence training. We determined that payment for the residence portion should be made based upon the measurement criteria provided under section 1684(a), now section 1788(a), and that the Administrator had the authority under section 1684(b), now section 1788(b), to measure the correspondence segment of the combined program since it did not fall within the purview of either section 1684(a), now section 1788(a), or within the purview of section 1682(c), now section 1786(a).

At that time, we did considerable research into the legislative as well as the regulatory background of the current practice. For the purposes of this opinion, we are summarizing the results of that research as follows:

(a) From the commencement of the GI Bill educational program for World War II veterans, the Congress has always provided for payment of institutional training.

(b) Since the enactment of Public Law 268, 78th Congress (1945), the Congress has provided some special treatment for the payment of correspondence training.

(c) Special provision for payment for programs given exclusively by correspondence was first introduced in the Korean GI Bill program (Public Law 550, 82d Congress) and has been retained in current law.

(d) The pursuit of combined courses consisting partly of correspondence training and partly of residence training was recognized under the World War II GI Bill program (Public Law 346, 78th Congress) at a time when correspondence training alone was not permitted (Administrator's Decision No. 606, dated November 21, 1944).

(e) The Veterans Administration, by regulation, recognized combined correspondence-residence programs during the Korean conflict GI Bill program under certain specified circumstances. These included requirements that the two elements be pursued sequentially (not concurrently); that it was the practice of the educational institution to permit the student to pursue part of his course by correspondence in partial fulfillment of the requirements for the attainment of the specified objective; and that the total credit established by correspondence did not exceed the maximum for which the institution would grant credit toward the specified objective (VA Regulation 12030).

(f) The Congress, in enacting the current GI Bill program (Public Law 89- 358), directed that, insofar as provisions of the current law were the same as the Korean conflict law, they were to be administered in the same manner.

It would appear that, instead of incorporating the former VAR 12030 into regulatory form, it was determined that the same provisions which were

previously contained in that regulation should, instead, be placed in DVB Circular 20-66-36, Appendix D (May 9, 1966). Thus, through this method, the combined correspondence-residence training provisions applied to the Korean conflict program were applied on the same basis to the current program. Subsequently, in March 1973, these provisions were again placed in regulation form--VA Regulation 14279.

An examination of this regulation shows that the basic requirements specified in paragraph 3(e) above were again set forth along with the added requirements on payment for such courses. Separate charges were required for each segment of the combined course, with the payment of the residence portion to be made pursuant to VAR 14270 (based on the residence measurement criteria) and the correspondence portion to be made pursuant to VAR 14136(A) (correspondence provision) with 1 month of entitlement charged for each (then) $220 paid to the eligible veteran.

Turning next to the law applicable to this question of combination courses, we would first point out that there has been no change in the language of that portion of 1652(b) of title 38, cited above, since the current program was enacted in 1966.

With respect to section 1786(a), changes have been made to the provisions of this part of the law since the enactment of Public Law 89-358. In the enactment of Public Law 92-540, effective October 24, 1972, the Congress repealed the former section 1682(c), which governed correspondence training, and reenacted it, with changes, in a new section 1786. As is pointed out in the Senate Committee Report (Senate Report No. 92-988), it was the intention of the Committee to basically restate existing law with certain changes. These changes were designed to reflect the new eligibility of wives and widows; to change the entitlement charge; to set up the affirmation agreement system; and to set up a refund policy for correspondence training. The specific language here in question is still in current law.

The Administrator, under the authority of section 1788(b) (previously section 1684(b)), has the power to set the measurement criteria for full-time and part-time training in the case of all types of courses not specifically detailed in subsection (a) of section 1788. Where the course is determined not to be exclusively by correspondence, the Administrator, under subsection (b), has the authority to develop a measurement for the correspondence portion of the combined course. It would appear to this office that in promulgating VAR 14279, the Administrator approved the payment of the correspondence portion of the combined program on the 90 percent basis since the regulation specifically refers to such a payment basis. The authority under this section of the law was therefore exercised.

Under the provisions of section 1685 (now section 1790(a)), the Administrator has the authority to disapprove enrollment of veterans in schools which charge different rates. In any combined correspondence-residence program, the school may not charge the veteran any different rate than it charges nonveterans and there is no authority in title 38 under which the Administrator may investigate rates of tuition, per se.

In summary, it is our opinion that:

(a) Combined correspondence-residence training programs were recognized as early as the Korean conflict GI Bill program.

(b) There has been no substantial change in current law, since its enactment in 1966, on which to base any legal ground for not currently recognizing such programs, especially in view of the Congressional mandate expressed in 1966 that the current program should, where it is the same as that provided in the Korean law, be administered in the same manner as that law.

HELD:

We see no basis for cancelling VAR 14279 as being in conflict with either section 1652(b) or section 1786(a) of title 38.

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