



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL
KANSAS CITY OFFICE



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NOV 25 2003

Board of Directors
Wahupa Educational Services
3251 Fourth Avenue
San Diego, CA 92103

Dear Board of Directors:

This is our final audit report, Control Number ED-OIG/A07-D0009, entitled Audit of the Talent Search Program at Wahupa Educational Services (Wahupa). The objective of our audit was to determine if Wahupa administered the Talent Search program in accordance with the law (Higher Education Act of 1965, Section 402B) and specific Talent Search regulations governing the documentation of participant eligibility. Wahupa officials did not concur with our findings and one of our recommendations in their August 11, 2003, response to our draft report. We made minor edits to our audit report based on our review of the response, but made no changes to our findings or recommendations. We have summarized the comments after the findings and recommendations and the full response is provided as an attachment to this letter.

AUDIT RESULTS

We found that Wahupa did not always administer its Talent Search grant in accordance with applicable law and regulations. For the grant period September 1, 2001, through August 31, 2002, we estimate that Wahupa served 1,702 allowable participants of the 2,300 participants it was funded to serve. Wahupa did not serve the participant number it reported on the Annual Performance Report (APR), and less than two-thirds of its Talent Search participants were low-income individuals who were potential first-generation college students. Not meeting the two-thirds assurance requirement resulted in a significant reduction in the number of allowable participants. We recommend that \$122,900, a pro-rata share of the year's expenditures for unallowable participants, be refunded to the Department.

Finding 1: Wahupa Educational Services Did Not Serve the Participant Number It Reported To Have Served In Its Talent Search Program

We estimate that the Wahupa Talent Search Program served 2,381 of 2,588 claimed participants for the September 1, 2001, through August 31, 2002, budget period. While the 2,381 participants is more than the 2,300 participants Wahupa was funded to serve, this is less than the 2,584¹ Wahupa reported in its APR to the Department of Education (the Department) for the budget period.

Wahupa's Talent Search Director provided us a listing (universe) of 2,588 participants served. From the universe, we selected a random sample of 100 participant names to determine whether they met both of the conditions for a participant as defined in 34 C.F.R. § 643.7

- (b) *Other definitions . . . Participant* means an individual who -
- (1) Is determined to be eligible to participate in the project under § 643.3; and
 - (2) Receives project services designed for his or her age or grade level.

Recordkeeping requirements are found at 34 C.F.R. § 643.32

- (c) *Recordkeeping.* For each participant, a grantee shall maintain a record of-
- (1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 643.3; . . .
 - (3) The services that are provided to the participant; . . .

Of the 100 sampled, 92 met both of the conditions for a participant. Eight students did not meet the definition of a participant. The Talent Search Director confirmed that:

- one file was missing, therefore documentation of eligibility was not available (in spite of this, we were able to determine receipt of an eligible service),
- five files lacked documentation to support citizenship status² (one student also lacked documentation of an eligible service), and
- two claimed participants (meeting eligibility) did not have documentation to support an eligible service.

¹ We noted an insignificant difference of four participants between the number reported on the APR (2,584) and the number (universe) provided to us (2,588) on the population list.

² Required by 34 C.F.R. § 643.3(a)(1)(iii).

Based on our statistical sample, we estimate that, of the 2,584 participant population reported in Wahupa's 2001-2002 APR to the Department, Wahupa served only 2,381³ participants. We estimate that the remaining 203 students did not meet both conditions for a participant.

The Department uses the information provided in the performance report to assess a grantee's progress in meeting its approved goals and objectives, and to determine a grantee's prior experience points. The data collected is also aggregated to provide national information on project participants and program outcomes. The Department may be making decisions based on an inflated count of participants and services delivered.

Wahupa Talent Search officials were not emphasizing documentation of student eligibility. Specifically, officials were not monitoring staff to assure that adequate documentation was maintained on the selection of participants and eligibility including citizenship status of prospective participants. In fact, eligibility determinations were often performed only after delivery of the service. Wahupa's written policy and procedures provided that documentation of eligibility and selection of the participant be recorded by the advisor completing a Needs Assessment form and completing a Participant Selection Decision form documenting the bases of eligibility. Instead, service was routinely provided simultaneously with the collection of Intake forms, completed exclusively by the student, and missing documentation was not always obtained.

Recommendations:

We recommend that the Chief Financial Officer (in collaboration with the Assistant Secretary for the Office of Postsecondary Education) require Wahupa Educational Services to:

- 1.1 Monitor Talent Search staff to assure that established procedures are followed to ensure that only eligible students are counted as participants and that only those participants receive project services.
- 1.2 Follow established policy and procedures of documenting participant eligibility for selection into the program prior to delivering program services.

³ We are 90 percent confident that the number of eligible participants was 2,381 +/- 4.83 percent.

Auditee Response and OIG Comments

Wahupa Educational Services did not concur with the finding “. . . insofar as it applies to students who indicated they had an application for immigration pending before the INS.” Wahupa does not dispute that the five citizenship exceptions lacked documentation of a review of required additional evidence (e.g., note to file from educational advisor to document review of INS documents). The basis for the five citizenship exceptions is footnoted in our report and found at 34 C.F.R. § 643.3(a)(1)(iii) which specifies five citizenship status categories, including, “Is in the United States for other than a temporary purpose and *provides evidence* (emphasis added) from the Immigration and Naturalization Service of his or her intent to become a permanent resident.” The response further states that the documentation is checked by the advisors “as a matter of course.” In our opinion, delivery of service is not confirmation that Wahupa staff ever reviewed INS records of the students’ intent to become a permanent resident. Wahupa states that it has already adopted a practice for its advisors to “write out a more detailed description of the documentation from INS.” We believe Wahupa’s intent to “make it a permanent policy” will satisfy the requirement of the regulation.

The response also disagreed with the finding “. . . insofar as it applies to students who received services on the day of their selection as participants, and these services were adjudged to be ineligible services.” Wahupa provides a TRIO Program Office statement of policy in its response that states, “It is preferable . . . to document a participant’s eligibility . . . prior to services being offered and received.” This statement of policy is consistent with the guidance we received from the Department in March 2003. Although Wahupa’s practice of delivery of services to claimed participants on the same date as their selection into the program is noted in the report, no participant service was disallowed due to the practice.

Wahupa concurs with Recommendations 1.1 and 1.2.

Finding 2: Wahupa Educational Services Did Not Meet the Assurance Requirement That Two-Thirds of Its Talent Search Participants Will Be Low-Income Individuals Who Are Potential First-Generation College Students

Wahupa officials did not verify low-income and first-generation status for all of its claimed participants for the September 2001, through August 2002, budget period. We reviewed records for the 92 eligible participants from the sample of 100 claimed students reported in Finding 1 to determine whether Wahupa fulfilled the assurance requirement of 34 C.F.R. § 643.10:

- An applicant shall submit, as part of its application, assurances that –
- (a) At least two-thirds of the individuals it serves under its proposed Talent Search project will be low-income individuals who are potential first-generation college students; . . .

Although we were able to confirm low-income status through other records obtained, verification of the first-generation status shown on student completed Intake forms was not documented for 56 of the 92 students that met the participant requirement. We requested other supporting documentation for first-generation status for those students in our sample that met the low-income requirement, but none was provided.

The Higher Education Act of 1965 (HEA) provides guidance for acceptable forms of documentation for low-income status determination, but it is silent as to first-generation status determination. We contacted the Department's TRIO Program Director for guidance on whether information provided by a minor child without verification is acceptable, and we received an email in reply from the TRIO Program Management and Development Team Leader that stated:

The parent or guardian (or in exceptional situations another knowledgeable adult (e.g. school counselor) should verify eligibility, which includes low-income and first-generation status, for a minor child. A common practice is for the parent or guardian to sign the application for participation in the program. Acceptable forms of documentation of low-income status are provided in Section 402A(e) of the Higher Education Act of 1965, as amended. As appropriate, a project should collect similar forms of documentation to verify first-generation status.

If parent verification was not obtained, Wahupa Talent Search officials accepted the information from the Intake form provided by the minor child to determine first-generation status. In accordance with Wahupa's written procedures, participants were given a Parents' Confidential Documentation form that would have confirmed first-generation, as well as low-income status. However, as stated in Finding 1, the eligibility determination was often done after the service was provided and many students never provided the parent form.

Based on our sample results, we estimate that not more than 1,135⁴ participants met the low-income and first-generation requirement. Therefore, the percentage of eligible participants who were also first-generation and low-income was not more than 48 percent (1,135/2,381 eligible participants from Finding 1), which is significantly below the required two-thirds.

⁴ Based on our sample, we are 90 percent confident that the documented number of low-income and first-generation (LIFG) participants was 932 LIFG students +/- 21.82 percent. Because the precision exceeds 20 percent, we have conservatively based our estimate on the upper limit or 1,135 (932 + 21.82 percent). The 1,135 provides a 95 percent confidence level that there are no more than 1,135 LIFG participants.

Providing services to unallowable students may dilute services provided to allowable participants by serving an infinite rather than a finite population as prescribed by law and Talent Search regulations. The APR, mandatory for Talent Search grantees annually, reiterated the importance stating:

Two-thirds of project participants each year must be both low-income and potential first-generation college students; the remaining one-third can be . . . any individual in need of services.

Using 1,135 low-income and first-generation students, Wahupa was limited to serving no more than 567 other participants, for a total of 1,702. This is significantly less than the 2,300 students Wahupa was funded to serve for the 2001-2002 budget period. Accordingly, a pro-rata share for unallowable participants should be refunded. See Table below for pro-rata calculation.

Talent Search	
September 2001 – August 2002 Expenditures	\$472,698.00
Number of Allowable Participants	1,702
Number of Participants Proposed and Funded	2,300
Number of Participants Unallowable (2,300-1,702)	598
Percent Unallowable	26%
Pro-Rata Over-Award (Grant Award Reduction)	\$122,901.48
To Be Refunded by Wahupa Educational Services (Rounded)	\$122,900.00

Recommendations:

We recommend that the Chief Financial Officer (in collaboration with the Assistant Secretary for the Office of Postsecondary Education) require Wahupa Educational Services to:

- 2.1 Refund \$122,900 for unallowable participants because Wahupa did not meet the two-thirds low-income and first-generation requirement.
- 2.2 Follow its procedures to verify student status to ensure that two-thirds of its Talent Search participants are both first-generation and low-income individuals.

Auditee Response and OIG Comments

Wahupa did not concur with the finding that it did not meet the assurance requirement that two-thirds of its participants, during the period of our review, were both low-income and first-generation. Wahupa continues that it, “. . . believes that it [the finding] is based on an

erroneous opinion about the documentation required for first-generation status.” The response also states that the requirement contradicts widespread practice and has not been “propagated among the Trio community.” We have no knowledge whether or not the policy interpretation provided to us by the TRIO program office has been disseminated to TRIO program grantees; however, we believe parental or other adult confirmation of first-generation status is appropriate and in accordance with the intent of the program.

Wahupa concurs with recommendation 2.2, but did not concur with recommendation 2.1, to refund \$122,900 for unallowable participants.

BACKGROUND

Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a-11 and 12), authorizes the Talent Search program, one of the Department’s TRIO programs. The Talent Search program is governed by the regulations codified in 34 C.F.R. Part 643. All regulatory citations in the report are to the codification in effect as of July 1, 2001.

The Talent Search program provides grants to projects designed to (1) identify qualified youths with potential for education at the postsecondary level and encourage them to complete secondary school and undertake a program of postsecondary education; (2) publicize the availability of student financial assistance for persons who seek to pursue postsecondary education; and (3) encourage persons who have not completed education programs at the secondary or postsecondary level, but who have the ability to do so, to reenter these programs(34 C.F.R. § 643.1).

Wahupa Educational Services, also known as Wahupa Educational Enterprises, Inc., is located in San Diego, California. It is a non-profit, multi-cultural agency that began as a small Talent Search project at the San Diego Indian Center in 1973.

Wahupa was awarded a four-year Talent Search grant covering the performance period September 1, 1999, through August 31, 2003 (P044A990015). Wahupa participates in other TRIO programs, including Upward Bound, and Educational Opportunity Center (EOC). For the 2001-2002 budget period, Wahupa was awarded \$472,698 to provide services to 2,300 participants and a \$10,000 supplemental technology grant awarded to all Talent Search projects. The Talent Search project administered by Wahupa targeted 25 schools, including 24 high schools and 1 middle school all located in San Diego County.

AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

The objective of our audit was to determine if Wahupa administered the Talent Search program in accordance with the law and specific Talent Search regulations governing the documentation of participant eligibility. Specifically, we sought to determine whether participants met the twofold requirements of (1) eligibility and (2) receipt of eligible services during the budget period.

To accomplish our objective, we

- reviewed applicable Federal law and regulations,
- reviewed files relating to the Talent Search project at Wahupa and at the Department's TRIO program office located in Washington, D.C.,
- interviewed Wahupa and Department of Education personnel,
- determined whether the TRIO cluster had been audited by the entity's Certified Public Accountants,
- obtained and analyzed documents related to the Talent Search project at Wahupa (e.g., organization chart, Wahupa policies and procedures), and
- randomly selected 100 Talent Search participants from a universe of 2,588 to test participant eligibility and documentation of eligible service. Records for all participants selected in the sample were reviewed.

We relied upon the population list provided to us by the Talent Search Program Director of Wahupa for drawing our sample. We tested the population list for accuracy and completeness by comparing source records to the population list and the population list to source records. Based on this test, we concluded the population data was sufficiently reliable to be used for a sample population in meeting the audit's objective. An extract of payment and award data from the Department's Grants and Payments System (GAPS) was used to corroborate information obtained from Wahupa's accounting system. We found that Wahupa's accounting data was sufficiently reliable for our audit purposes.

The audit covered the 2001-2002 grant budget period (September 1, 2001, through August 31, 2002). We visited the Department's TRIO program offices located in Washington D.C., from July 31, 2002, to August 2, 2002. We conducted fieldwork at Wahupa from February 18, 2003, to February 28, 2003. We held a field exit conference with Wahupa officials on February 28, 2003. Our audit was conducted in accordance with generally accepted government auditing standards appropriate to the scope of review described above.

STATEMENT ON MANAGEMENT CONTROLS

As part of our review we assessed the system of management controls, policies, procedures, and practices applicable to Wahupa’s administration of the Talent Search program. Our assessment was performed to determine the level of control risk for determining the nature, extent, and timing of our substantive tests to accomplish the audit objective.

For the purpose of this report, we assessed and classified the significant controls into the following categories:

- Participant service;
- Participant eligibility; and
- Program record maintenance.

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, our assessment disclosed management control weaknesses, which adversely affected Wahupa’s ability to administer the Talent Search program. These weaknesses included noncompliance with Federal regulations related to participant services resulting in participant ineligibility and deficient record maintenance procedures. These weaknesses and their effects are fully discussed in the *Audit Results* section of this report.

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

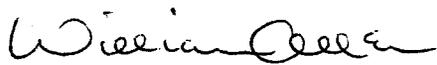
If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on the audit:

Jack Martin
Chief Financial Officer
Office of the Chief Financial Officer
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

It is the policy of the U.S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be greatly appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,



William Allen
Regional Inspector General for Audit

Attachment

cc: Jack Martin, Chief Financial Officer
Sally Stroup, Assistant Secretary, Office of Postsecondary Education

EDUCATIONAL TALENT SEARCH PROJECT
Wahupa Community Educational Services
Community-Based Programs of the U.S. Department of Education

3251 Fourth Avenue – San Diego, CA (619) 297-4471

August 11, 2003

William Allen
Regional Inspector General For Audit
Office of Inspector General
8930 Ward Parkway, Suite 2401
Kansas City, MO 64114-3302



Re: Transmittal of Comments in Response to Draft Report
Wahupa Talent Search Audit

Dear Mr. Allen,

Please find enclosed this community agency's comments regarding the findings and the recommendations found in your draft report.

With regard to the second finding in the draft, I sincerely believe that over 70% of the Trio projects (particularly ETS, EOC and SSS, but also some Upward Bounds) are accepting verification of first-generation status information directly from the student, on the student application, over the student's signature. This is based on an informal survey I made at a recent SAEOPP training conference among the trainers and some project directors. I asked them if they had ever had notice of a policy requiring parental verification of first-generation status information. The answer was uniformly "no". I also surveyed a stack of application forms being utilized by long-established projects which were offered as samples at the training conference. Out of the 11 forms in the stack, 8 of the forms solicited the information regarding whether the parents had graduated from college with a B.A. from the student, on the student application, over the student's signature. So far as I can tell, no one among the projects has had any notice that there is anything amiss with the use of student verification for first-generation status which, evidently, most projects have been using over the years. We have had at least five site visits by Regional Representatives where our method of verifying first-generation status was reviewed and approved. I also believe that the other branch of the Department that does site visits is not employing the same standard for verifying first-generation status as that used by your auditors.

Yours truly,
Wahupa Educational Services

A handwritten signature in cursive script, appearing to read "Victor Shupp". The signature is written in dark ink and is positioned below the typed name.

Victor Shupp, Project Director, on behalf of the Board



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Board of Directors
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For Your Reference

JUL 11 2003

Dear Board of Directors:

This Draft Audit Report (Control Number ED-OIG/A07D0009) presents the results of our audit of the Talent Search program at Wahupa Educational Services (Wahupa). The objective of our audit was to determine if Wahupa administered the Talent Search program in accordance with the law and specific Talent Search regulations governing the documentation of participant eligibility. Please review this draft audit report and provide us with written comments on the findings and recommendations within 30 days of the date of this letter.

- If you concur with a specific finding and recommendation, describe the corrective actions you have already taken or those you plan to take and the targeted completion date.
- If you do not concur with a finding, give your reasons for disagreement together with the data to support your position.
- If you do not concur with a recommendation, please explain your disagreement and set forth the alternative corrective actions you have taken or plan to take and the target dates.

This draft report is being provided to obtain advance review and comment from those with responsibility for the subject it discusses. It has not been fully reviewed within the Department of Education, and is, therefore, pre-decisional and subject to revision.

Recipients of this draft report must not, under any circumstances, show or release its contents for purposes other than official review and comment. It must be safeguarded to prevent publication or improper disclosure of the information it contains. This draft and

**WAHUPA EDUCATIONAL SERVICES
COMMENTS ON FINDINGS AND RECOMMENDATIONS CONTAINED IN THE
DRAFT REPORT FROM THE OFFICE OF THE INSPECTOR GENERAL**

FINDING 1:

That Wahupa did not serve the number it reported to have served.

Response:

Respondent disagrees with the finding insofar as it applies to students who indicated they had an application for immigration status pending before the INS (checked the third box on the application form); and insofar as it applies to students who received services on the day of their selection as participants, and these services were adjudged to not be eligible services.

I. Summary

The finding rests primarily on:

- a. The auditors' conviction that where students present "evidence from the Immigration service" showing that they have an application pending, the educational advisor should specially annotate on the face of the student's application the specific letter or form that was presented by the student. Although the participants were served and indicated their immigration status by checking a box on the application form, the auditors' were unwilling to count them as participants without more detailed information written on the application.
- b. The auditors' belief that services could not be counted as real services if the services took place simultaneously with the collection of applications and selection of participants.

II. Documentation of Participants Who Are Not Legal Permanent Residents But Who Present Evidence Of An Ongoing Application at INS In Accord With 34 CFR 643.3(a)(1)

A. Facts

Each student application provides boxes to be checked by the student indicating (a) U.S. Citizen, (b) Legal Permanent Resident, or (3) Application for immigration status pending before the INS.

In the cases where the auditors did not accept the participant, the participant had checked the third box, indicating an on-going application process at INS. Therefore, the students did in fact indicate their immigration status. However, the auditors felt that the educational advisor should have made a special annotation on the face of the student application, specifying the specific documentation from the INS that was presented by the student.

B. Verification In The Normal Course

For Talent Search programs in California all students who have applications pending before INS are subject to significant relief under state law AB540, which permits these students to attend state universities and colleges without paying non-resident fees. Therefore, each advisor, in the normal course, must verify the exact status of each such participant to determine whether the participant meets the following requirements:

- (a) Must have a bona fide application for immigration status filed with the INS.
- (b) Must have attended and graduate from a California public high school.
- (c) Must qualify academically for admissions to a state college or university.

Students who check the third box in the immigration area of the student application must have their documentation checked by the ETS advisor as a matter of course in order to determine that the student qualifies for AB540 relief. Students who do not bring documentary evidence of their application before the INS can not be served, not only because they can not be considered as participants, but also because there is nothing that the Project can do for them to assist them in college admissions or financial aid. Therefore the system is self-regulating. If the student does not bring in the required documentation, the student is dropped from the target list for the school site because there are no services that we could provide to them.

D. Suggested Approach

The regulation specifies the substantive qualifications for residency status needed in order to be a participant. But it does not prescribe a particular way that the evidence presented by the student has to be documented on the face of the student application.

Responded believes that if the Department chose to specify a standard way that the evidence from the Immigration Department must be annotated on the student application, the standard should be issued as a policy or as an advisory in writing to all projects, so that all projects are on notice of the requirement, and all projects are audited by the same standard.

In this case where the status of the student was documented, where there are no specific regulatory standards for how the status is to be documented, and where projects commonly have the students indicate their citizenship/immigration status by checking boxes on the face of the application, it would make sense to make a "Best Practice" recommendation that the advisors write out a more detailed description of the documentation from INS on the face of the student application. Wahupa has, in fact, already adopted this practice and will make it a permanent policy. Respondent does not believe, however, that it is appropriate under these circumstances to disqualify the students as participants.

III. Delivery of Services To Participants On The Same Date As Their Selection

A. The Auditors' Position

In discussions with Respondent, the IG team took a very strong position that *services did not count as eligible services which were delivered to a potential participant at the same time as the student was being processed and documented for selection*. For this reason, the IG team refused to accept as participants any student who received program services only on the same day that the student was recruited and selected.

The Draft Report refers to this idea repeatedly. On page 3 of the draft report the auditors wrote: "In fact eligibility determination was often performed only after delivery of the service. Wahupa's written policies....provided that documentation of eligibility and selection of the participant be recorded ... Instead, service was routinely provided simultaneously with collection of Intake forms completed exclusively by the student and missing documentation was not always obtained."

B. Practical Issues At The School Outreach Sites

Based on Respondent's experience and also observation of several other Talent Search programs over the years, a Talent Search Program is normally seeing a large number of students very rapidly. Because students are often difficult to pull from class(we can't be sure of getting very many visits with any given student), it is vital to start program services (such as filling out college admissions form) on the first visit with the student in order to meet the admissions and financial aid deadlines or get the students started in their process. As a practical matter, so long as the elements to support selection of the student as a participant are present, based on the application form, it is in the students' best interest to launch into program services immediately and in some cases complete the formal paper work regarding selection later in the day. We also believe that most Talent Search Projects have traditionally approached it this way because of the conditions in the field.

Please note that this project received at least five (5) formal Site Visits by Regional Representatives since the beginning the Talent Search Project. They observed the selection procedures and the services at the school sites. At no time did any Regional Representative suggest that it was improper to initiate services on the day the student was interviewed and selected.

C. Formal Statement Of Policy By The Trio Office

In response to a request for clarification of this issue by Deltha Colvin which she needed in order to continue training new directors thru SAEOPP, the Trio Office provided the following formal statement of policy through Program Officer Loretta Brown:

"It is preferable for a Talent Search project to document a participant's eligibility and conduct a needs assessment prior to services being offered and received. However, because of the large number of participants to be served by each project

and the manner in which many projects deliver services, the Department of Education does not require the eligibility documentation and needs assessment be completed before service delivery. For example, a Talent Search project may conduct a financial aid workshop at a target school for potential Talent Search participants. During or soon after this workshop, the project may ask the students to complete an intake form that would document eligibility for and interest in participating in the Talent Search program.

“A grantee identifies the target schools to be served by the project based on large numbers or high percentages of eligible students in need of project services attending those schools. Thus, a project may assume that most of the students at the target school are eligible for the program and thus combine the delivery of services with the process of identifying and selecting eligible project participants.”

(From Loretta Brown to Deltha Colvin by e-mail on March 11, 2003)

Recommendation 1.1 Response:

Wahupa agrees that it should and will follow established policies to ensure that only eligible students are counted as participants and receive services. The project has accepted the auditors' recommendation that, for students who identify themselves as persons who are currently pursuing an application for immigration status with the INS, the project currently not only requires that the students present the documentary evidence from INS regarding their application, but also requires that each educational advisor record in writing the nature of the specific INS form or other INS document presented by the student, on the face of the student's application in the space next to the box which is checked by the student indicating the student's residency status. Furthermore, data entry staff and advisors have been instructed that no student may be selected as a participant, or recorded into the participant database, or given program services, until this documentation on the face of the student application has been completed. All of these actions have been taken and this system is in place and being monitored.

Recommendation 1.2 Response:

Wahupa agrees that it is desirable to fully document participant eligibility and the selection of the participant prior to initiating services. Therefore, the system whereby students are recruited and selected has been altered so that:

- a) The majority of participants will be recruited, interviewed and documented early in the eleventh grade (rather than at the end of the eleventh grade year or in the twelfth grade as was the pattern). This will allow the advisors more time to continue contacting the students to ask for parent documentation, and time to fill out the selection form carefully without being under extreme pressure to begin services in order to meet critical deadlines. In order to allow time for this, each advisor will see approximately 50% fewer twelfth graders than has been the system in the past. By this system, most eleventh grade participants who role over to the twelfth grade will already have been documented and selected so that filling out college applications and other services can begin without overlapping the selection process.

- b) To avoid confusion over free lunch lists, the selection documentation by advisors who are utilizing the free lunch list en lieu of documentation from unresponsive parents, are required to have the free lunch list for the correct school and academic year on file in the central locked file cabinets. The data entry staff are required to verify the presence of the free lunch list in the central file before accepting any student application/participant selection forms from the advisor concerned or entering them into the participant database.
- c) The student application/participant selection form has been remodeled so that the advisor must provide data regarding each eligibility requirement and sign and date the selection form before the participant can be added to the advisor's case load. If any eligibility or assurances factor (e.g. low-income) is not documented, the application/selection form is returned to the advisor for correction.

All of these actions have been taken, the system is in place, and several multi-day training sessions have been provided to the staff regarding the new procedures.

The Wahupa staff appreciates the recommendations for better practice which were provided orally by the auditors during our conversations and is endeavoring to implement them. However, the project also believes that it is legitimate to provide some informational services at the first meeting with the participants, as permitted by the policy statement from the Trio office, above. This is to motivate the student to stick with the process and provide necessary documentation. Controls are now in effect to prevent excessive rendering of services that would interfere with the orderly documentation of eligibility and selection.

FINDING 2:

That less than two-thirds of the participants were both low-income and first-generation.

Response:

Respondent strongly disagrees with the finding and believes that it is based on an erroneous opinion about the documentation required for first-generation status. This standard contradicts widespread practice among TS, EOC and SSS programs for the last 30 years, and asserts a policy that has never in fact been propagated among the Trio community, and of which no one has received reasonable notice.

I. Summary

The draft report recounts that the auditors requested and received an opinion from Trio Management that stated that the information regarding first-generation status (educational level of parents) could not be provided by a student participant, but only be verified by a signed statement by the parent.

Since 1972 Respondent's Talent Search has relied on information provided on the student application and signed by the student to indicate whether either parent the student lives with has graduated from a college or university with a bachelors degree. Therefore it follows that, when this standard was applied to this Talent Search, most of the participants were eliminated from the necessary two-thirds who are to be both low-income and first-generation, not because of lack of

low-income documentation, but because the first-generation information was provided by the student and not by the parent.

Respondent does not believe that the opinion received by the auditors was an actual policy that has ever been rendered in written form or propagated to the Trio community in order to give the projects notice of the standard to be enforced. Given the practice in the field it would be completely arbitrary to start applying this standard to projects in the field without getting collegial feedback and giving all projects due notice. The application of this standard to this Talent Search where there has never been any kind of notice to this project or to the Trio community of the proffered standard, is inherently a violation of the principles of Due Process, which require fair notice to any party who is to be judged by a standard, and the opportunity to provide information as to why the standard might be unworkable or counter-productive.

Other reasons for doubting the validity of the cited standard are:

1. Widespread practice among ETS, EOC and SSS programs of accepting the information from the student participant. (8 out of 11 forms surveyed among sample forms provided at a recent SAEOPP Conference asked for the first-generation information from the student, on the student application, signed only by the student.)
2. When surveyed by Respondent, a former member of Trio Management, our program officer, the trainers at a SAEOPP training conference (all project directors with more than 15 years of experience and high credibility as trainers regarding regulations and policy), all stated that they had never heard of such a policy. This indicates that virtually no one in the Trio community has any reasonable notice of this standard.
3. Since 1972 this Talent Search has had at least five site visits. The current project director was present for the last three site visits. At each one of these site visits the Regional Representative specifically reviewed the forms by which we gathered information, observed the selection process and approved it. Respondent has documented first-generation status by the same means consistently for thirty years, and it has been reviewed and approved repeatedly by representatives of the department who were entrusted with conducting site visits. Respondent should have a right to rely on this, under the equitable principle of *detrimental reliance* in Federal Common Law. This is especially true where no written regulation has ever existed to specify the form of documentation required and no writing of any sort has ever been circulated among the projects purporting to announce an official policy.
4. **Frustration of the legislative purpose of HEA 402(A)(e).** The standard cited by the auditors would clearly frustrate the intent of the legislative change in HEA 402(A)(e), which allows a student with an unresponsive parent, who doesn't return parental documentation, to be verified as low-income from the Free Lunch List. It would frustrate it because even after a participant's low-income status was established from the Free Lunch List, ***the project would still not be able to use the participant to meet its assurance of two-thirds.*** The student's parent didn't respond, so the student couldn't be considered first-generation. Under this scenario the student winds up among the one-third who can be low-income or neither-nor. ***The student's chance of being included in the two-thirds group would not be altered in any way, and the student might as well have stayed as a neither-nor.*** The student's low-income status by itself is useless to the project in order to meet its two-thirds requirement. Therefore there would be no motivation to utilize the flexibility afforded by HEA 402(A)(e) because ***it would not help the project in any way to verify the low-income status of a student from the Free Lunch List who***

nevertheless could never be considered first-generation because of the lack of parental documentation. For all practical purposes it would nullify the effect of the provision and the benefits to the projects and to the participants which were intended to flow from it.

II. Established Practice And Approval By Regional Representatives During Site Visits

It is clear that this Talent Search Program has always relied primarily on the *participant's statement* on the Student Application to document the educational level of the parents for purposes of ascertaining whether the student is a first-generation potential college student.

The specific question that is asked on the student application has always had wording more or less like this: "Has either of the parents you live with graduated from a four-year college or university in the United States with a Bachelor's degree?"

Since 1972 when this Talent Search began, this practice of asking the student for this statement regarding the educational level of the parents has been followed consistently by this Project. During those years, the Project had at least five (5) site visits. The current project director was present for three (3) of those site visits which were conducted by the Region IX Regional Representative.

On each of those occasions the Regional Representative reviewed the student application form, the method by which students were documented as first generation and low income, and observed the Academic Advisors at their work at the schools as they carried out the selection process.

At no time did the Regional Representative ever mention that the student's signature on the student application was insufficient to establish the lack of a four-year education on the part of their parents. All of the discussions in those days were focused on whether the project could use the Free Lunch List to verify the low income status of the students whose parents failed to return the Parent Information Form. This particular issue was resolved by the legislative change in HEA 402(A)(e). There was never any suggestion that those same students could not be seen as first-generation because of the lack of parental documentation. Why wasn't there a legislative or regulatory statement initiated regarding adequate documentation for first-generation? Respondent believes that the issue was never raised because no one questioned that the student-provided information regarding the parents' educational level was sufficient to establish first-generation status.

III. Widespread Practice At Other Trio Programs.

Respondent's project director recently attended a multiple-day training session in San Diego presented by SAEOPP. The trainers and the trainees were from many areas of the United States and several seasoned project directors of Talent Search, EOC and Student Support Services programs were present.

Since Respondent had recently received an e-mail from the IG Audit team regarding this "guidance on whether information by a minor child without verification is acceptable" (Pages 4-5 of the Draft), Respondent endeavored to determine how many project directors and/or trainers in Trio were aware of this interpretation.

When asked, the trainers and project directors who were contacted stated that they had never heard of such a policy. They also stated that while the parent's verification of low-income status

(or Free Lunch verification) was necessary for the low-income documentation, they believed the most common practice was to ask the question of the student with regard to parents' educational level. One of the trainers is a Student Support Services manager who spends a great deal of time training and doing external evaluations. She stated that it is the universal practice among Student Support Services programs to ask the student to verify whether the student's parents have graduated from college with a Bachelor's degree, and not to ask for parental statements on this issue although virtually all of the students are dependent students and some are minors.

SAEOPP produced a large binder of sample application forms that are in current use by established projects. These forms were being recommended as samples that new project directors could utilize and adapt for their programs. **Out of 11 forms, 8 of the forms asked for the first-generation information from the student, on the student application, signed only by the student. Most used essentially the same language as that used by Wahupa on the student application:**

“Did either of the parents with whom you live graduate with a Bachelor’s degree from a four-year college or university in the United States?”

Respondent contacted its program officer at Trio. She stated that she was not aware that any such policy had ever been established. Respondent submitted a written request for a formal statement of policy regarding documentation of first-generation status. Respondent was advised that it would take substantial time to evolve a formal written statement because several levels of the Department had to be consulted and the “practical effect on the programs” had to be taken into consideration.

Respondent contacted a former senior member of Trio staff, who had retired recently. She was deeply involved in the management of the Trio Office both during the tenure of Richard Sonnergren and for several years after he retired. She responded to my question by stating that she had never been aware of such a policy with respect to documentation of first-generation status. She also stated that she could not understand how such a new policy could be enforced without first giving all the projects reasonable notice.

For these reasons, Respondent believes that the policy applied by the IG team in this case is not a policy that has ever been published or promulgated among the Trio community. If it ever existed in any form prior to being e-mailed to the auditors' office, no one was on notice of it. If seasoned trainers were unaware of it, highly experienced project directors were unaware of it, senior Trio staff members were unaware of it, the Program Officers at the Trio Office were unaware of it, Regional Representatives were unaware of it, and it never was brought up during site visits, how could there have been fair notice of its existence to the people laboring in the field?

When a standard is used against any project, of which there has never been any reasonable notice, either to this project or to any other projects that are similarly situated, it violates the most basic requirement of due process, which is notice and the reasonable opportunity to conform to the new standard or provide feedback regarding the standard. When a project like Respondent's Talent Search has additionally relied in good faith on *previous representations made by official representatives of the department approving its methods of documentation* in site visits, this makes the denial of basic justice all the more blatant.

IV. HEA402(A)(e) And The Problem Of The Unresponsive Parents

A. Unresponsive Parents

When Regional Representatives visited projects during the years prior to the changes enacted in HEA(A)(e) the projects universally complained of the near impossibility of getting sufficient parents to fill out and return Parent Forms with Income Information so that an adequate number of the students could be documented as low-income. This problem is consistent with the fact that:

a. The target families are extremely low-income, the students at risk, and the parents often dysfunctional or suspicious of requests for specific information. For immigrant families there is a persistent fear of presenting information which they fear might compromise them. For many parents the education of their children is not a conscious value and they don't respond to requests that forms be completed or signed. The target students live in census tracts where (in our case) less than 7% of the parents have attended college and where in less than 50% of the parents have graduated from high school. Higher Education is not a concept among most of these parents.

b. The older, larger Talent Search projects were seeing very large numbers of students and had limited time to chase down students or keep sending forms over and over to unresponsive parents.

In order to deal with students who were obviously in need of services and eligible, but whose parents would not respond, some projects (like Wahupa) started securing Free Lunch lists and using them for verification of low-income status en lieu of parental documentation where the parents would not respond.

There was some controversy over this remedy, as some of the officials performing site visits would not accept free lunch eligibility en lieu of the income verification by the unresponsive parent. Finally this was resolved by enacting the changes embodied in HEA 402(A)(e) which made it clear that being on the free lunch list or an AFDC list could be used en lieu of the income verification by the unresponsive parent.

In site visits to Wahupa by the Regional Representative for Region IX, it was clear that where the parents did not return the Parent Documentation Form (which covered both family income and educational level of the parents among other data), Wahupa was using

(a) The free lunch list to establish low-income status.

(b) The student's application with the student's signature to establish first-generation status.

It was also clear to the Regional Representative that Wahupa Talent Search was considering these students to be part of the two-thirds of the case load that were both low-income and first-generation. The Regional Representative consistently approved the method of documentation and the fact that these students were reported as part of the group that were both low-income and first generation to meet the assurances requirement of two-thirds.

B. The Use Of The Free Lunch List Where Parents Did Not Respond Could Produce No Benefit For the Project or the Participant Unless the Participant's Verification Of First-Generation Status Was Accepted

In retrospect it is clear that the only way the use of the Free Lunch List en lieu of documentation from unresponsive parents could benefit the project was if the Participant's verification of first-generation status was accepted. *The same unresponsive parent who would not return the form for purposes of income verification would also not return the form for purposes of verifying first-generation status. Therefore, if the participant's own verification of first-generation status was not accepted, the student could be documented as low income from the Free lunch List, but could never be both low-income and first-generation.* The verification of first-generation status from the unresponsive parent would still be missing. The net result for the project would be that there would be no logical reason to bother to use the alternative low-income verification, because without the parent document the project still could not document the student as first-generation. And since the students who were verified from the Free Lunch List could never be included in the two-thirds of the case load that was Both/And, the student would have to be included in the other one-third, anyway. And the student could have been included in the other one-third of the case load when the student was Neither/Nor – *neither* low-income *nor* first-generation.

From the student's standpoint, the student's chances of being included in the case load would be no better as a result of being documented as low-income from the free lunch list, because without the parent documentation the student still would have to get squeezed into the one-third of the case load along with the Neither/Nors.

Therefore, in a scenario where the student's verification of first-generation status is not accepted, the alternative means of verifying low-income contained in HEA 402(A)(e) would become meaningless and useless to both the project and the potential participant. It would serve no purpose. The intended effects of HEA 402(A)(e) would be nullified.

Recommendation 2.1 Response:

For all the reasons discussed above, Respondent strongly disagrees with the recommendation that Respondent should pay back to the Department over 122,000 dollars which have been already expended in delivering legitimate services to bona fide participants. The only thing Wahupa has done is continue to document the first-generation status of participants by the same method that it has consistently employed for over thirty years since 1972. This approach to verifying first-generation status was approved and re-approved over and over again by Regional Representatives during site visits. During this same period, no written policy was ever issued that in any way specified the method of documentation to be employed for first-generation status. Certainly no policy was ever announced that would have given Wahupa or any other project any indication that Wahupa's approach to documenting first-generation status was incorrect.

If the Department reverses the position that its representatives have taken during previous site visits, then Wahupa has relied to its detriment on the Department's own representations via its authorized representatives, and is then being punished by the Department for believing the

Department's own representatives. This circumstance is clearly analogous to those giving rise to the equitable doctrine of Detrimental Reliance.

No notice of the of policy by which Wahupa is being judged has ever been given to this Talent Search or to any other entity within the Trio community. No past or present member of program staff at the Trio office is aware of, or has been put on notice of the standard that is being imposed by the auditors.

In the absence of fair and reasonable notice of the standard to be enforced, the taking of 122,000 dollars from Wahupa is clearly violative of the Due Process provisions of the Fifth Amendment of the U.S. Constitution.

Moreover, Respondent has been informed by colleagues in the field, and believes, that the interpretation imposed by the auditors is distinct from the standard being enforced by other branches of the Department that are also currently doing site visits throughout the United States. If this is so, the imposition of this standard is violative of Wahupa's right to Equal Treatment Under the Law as required by the Fourteenth Amendment of the Constitution. Wahupa is being singled out, and judged by a different standard, than other projects that are similarly situated, but happen to be audited or site-visited by a different branch of the Department of Education.

The recommendation is punitive, confiscatory and would result in the bankruptcy and closing down of this community agency which does not possess assets equivalent to the amount of money demanded. This is a disproportionately harsh, punitive and extreme measure to be taken against a Talent Search project solely because the project has continued to serve bona fide participants, and to document their first-generation status, in a manner that has been repeatedly reviewed and approved by the Department in the past. Wahupa has done nothing fraudulent, criminal or in any way damaging to the department. The recommendation is unjust, and should not be enforced by the Department.

Recommendation 2.2 Response

On its face Wahupa can only agree with the words of this recommendation. However, Wahupa believes and has forcefully argued above, that its Talent Search has been following appropriate procedures to document first-generation status of participants, and to ensure that two-thirds of the participants are both low-income and first-generation.

Submitted:

The Board of Directors
Wahupa Educational Services

By 

Project Director, on behalf of the Board