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Beginning August 2, 1965, the General Services Administration inaugurated a new information service, the "Weekly Compilation of Presidential Documents." The service makes available transcripts of the President's news conferences, messages to Congress, public speeches and statements, and other Presidential materials released by the White House up to 5 p.m. of each Friday.

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The *Weekly Compilation* carries a Monday dateline. It includes an Index of Contents on the first page and a Cumulative Index at the end. Other finding aids include lists of laws approved by the President and of nominations submitted to the Senate, and a checklist of White House releases.

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Subpart C—War Orphans' Educational Assistance Under 38 U.S.C. Ch. 35

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Subpart C—War Orphans' Educational Assistance Under 38 U.S.C. Ch. 35

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PAYMENTS; SPECIAL RESTORATIVE TRAINING

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AUTHORITY: The provisions of this Subpart C issued under 72 Stat. 1114, 1193, as amended; 38 U.S.C. 210, Ch. 35.

Subpart C—War Orphans' Educational Assistance Under 38 U.S.C. Ch. 35

ADMINISTRATIVE

- § 21.3001 Delegations of authority.**
(a) Except as otherwise provided, authority is delegated to the Chief Benefits

Director and to supervisory or adjudicative personnel within the jurisdiction of the Compensation, Pension, and Education Service designated by him to make findings and decisions under 38 U.S.C. chapter 35 and the applicable regulations, precedents and instructions, as to programs of education or special restorative training.

(b) Authority is delegated to the Chief Benefits Director to enter into agreements for reimbursement of State approving agencies under § 21.3153.

(c) Authority is delegated to the Director, Compensation, Pension, and Education Service to exercise the functions required of the Administrator for:

(1) Waiver of penalties for conflicting interests under § 21.3005;

(2) Actions otherwise required of State approving agencies, under § 21.3150(c);

(3) Approval of courses under § 21.3250(c).

§ 21.3002 Finality of decisions.

(a) The decision of a duly constituted agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Veterans Administration as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 21.3003. (See §§ 19.153 and 19.154 of this chapter.)

(b) Current determinations of line of duty, character of discharge, relationship, and other pertinent elements of eligibility for a program of education or special restorative training, made by either an adjudicative activity or an insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

§ 21.3003 Revision of decisions.

The revision of a decision on which an action was predicated will be subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter;

(b) Difference of opinion, § 3.105(b) of this chapter;

(c) Character of discharge, § 3.105(c) of this chapter;

(d) Severance of service connection, § 3.105(d) of this chapter;

(e) Veteran no longer totally and permanently disabled, § 21.3135(k).

§ 21.3004 Audit of payments.

Payments under 38 U.S.C. ch. 35 shall be subject to audit and review by the General Accounting Office as provided by the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act of 1950 (38 U.S.C. 1761(a)).

§ 21.3005 Conflicting interests.

(a) *General.* (1) Every officer or employee of the Veterans Administration who has, while such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any educational institution operated for profit in which an eligible person was pursuing a course of education under 38 U.S.C. ch. 35 will be immediately dismissed from his office or employment.

(2) The Administrator may, after reasonable notice, and public hearings if requested, waive in writing the application of this paragraph in the case of any officer or employee of the Veterans Administration, if he finds that no detriment will result to the United States or to eligible persons by reason of such interest or connection of such officer or employee (38 U.S.C. 1764).

(b) *Waiver.* Where a request is made for waiver of application of paragraph (a)(1) of this section, it will be considered that no detriment will result to the United States or to eligible persons by reason of such interest or connection of such officer or employee, if the officer or employee:

(i) Acquired his interest in the school by operation of law, or before the statute became applicable to the officer or employee, and his interest has been disposed of and his connection discontinued, or

(ii) Meets all of the following conditions:

(i) His position involves no policy determinations, at any administrative level, having to do with matters pertaining to payment of educational assistance.

(ii) His position has no relationship with the processing of any eligible person's application for educational assistance.

(iii) His position precludes him from taking any adjudicative action on individual applications for educational assistance.

(iv) His position does not require him to perform duties involved in the investigation of irregular actions on the part of schools or eligible persons in connection with 38 U.S.C. ch. 35.

(v) His position is not connected with the processing of claims by, or payments to, schools, or students enrolled therein under the provisions of 38 U.S.C. ch. 35.

(vi) His work is not connected in any way with the inspection, approval, or supervision of schools desiring to train eligible persons.

(c) *Authority.* (1) Authority is delegated to the Director, Compensation, Pension and Education Service, and to the field station head in cases of Veterans Administration employees under his jurisdiction, to waive the application of paragraph (a)(1) of this section in the case of any Veterans Administration employee who meets the criteria of paragraph (b) of this section and to deny requests for waiver which do not meet such criteria. If the circumstances warrant, the request may be submitted to the Administrator for decision.

(2) Authority is reserved to the Administrator to waive the requirement of paragraph (a) of this section in the case

of an officer of the Veterans Administration, and in the case of any employee who does not meet all of the criteria of paragraph (b) of this section.

(d) *Disapproval of courses.* Where it is found that an officer or employee of the Veterans Administration has any interest in, or receives any wages, salary, dividends, profits, gratuities or services from any such school, and waiver has not been granted, the State approving agency and the school will be notified immediately that the courses offered by the school have been disapproved, the reason for disapproval, and the conditions under which the disapproval may be lifted.

(e) *Notice of eligible persons.* The eligible person will be notified in writing sent to his latest address of record when:

(1) The course or courses are disapproved, or

(2) The State approving agency fails to disapprove the course or courses within 15 days after the date of written notice to the agency, and no waiver has been requested, or

(3) Waiver has been denied.

The eligible person will be informed that he may apply for enrollment in an approved course in another school, but that in the absence of such transfer, educational assistance payments will be discontinued effective the date of discontinuance of the course, or the 30th day following the date of such letter whichever is earlier.

§ 21.3006 False or misleading statements.

(a) Payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States (38 U.S.C. 1768).

(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.

(2) Where the falsity of a certification or claim is discovered after payment has been released an overpayment will be set up for only that portion of the claim to which the claimant was not entitled.

(b) A determination that false or misleading statements have been made will not constitute a bar to payments based on further training, if the requirements of § 21.3008(b) as to waiver or recovery of any overpayment have been satisfied.

(c) The provisions of this section are not for application where forfeiture of all rights has been or may be declared under the provisions of § 21.3007.

§ 21.3007 Forfeiture.

The rights of an eligible person to receive educational assistance are subject to forfeiture under the provisions of §§ 3.901, 3.902, and 3.903 of this chapter (38 U.S.C. 3503, 3504, and 3505).

§ 21.3008 Overpayments; eligible persons.

(a) *Denial of further benefits.* Where an overpayment of educational assistance or special restorative training allowance or other gratuitous benefit has been made to or on behalf of an eligible person, no further educational assistance allowance will be paid until the overpayment has been collected or arrangements have been made for repayment, unless recovery has been waived.

(b) *Benefits following recovery or waiver.* Where an eligible person has been denied entrance or reentrance under this section and subsequently liquidates or makes arrangements to liquidate the outstanding overpayment, or the overpayment has been waived, the effective date of entrance or reentrance will be determined under § 21.3131 or § 21.3331.

(c) *Prevention of overpayments.* Where there is a question on whether approval of a course should be withdrawn, and it appears that overpayments may exist or be created, further payments to eligible persons enrolled in the school may be withheld pending resolution of the question. See § 21.3134.

§ 21.3009 Overpayments; waiver or recovery.

(a) *General.* Under 38 U.S.C. 1766, the amount of an overpayment of educational assistance allowance on behalf of an 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 38 U.S.C. ch. 35 and Veterans Administration Regulations, excessive absences from a course, or discontinuance or interruption of a course by the eligible person, or (2) false certification by the school. The amount of the overpayment may be recovered from the school in the same manner as any other debt due the United States. Any amounts so collected from the school may be reimbursed if the overpayment is recovered from the eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law.

(b) *False certification.* Liability resulting from a false certification is not contingent upon willfulness or negligence, but simply upon a finding that the overpayment to the eligible person resulted from a certification which was contrary to fact at the time it was made and therefore false.

(c) *Evidence.* A determination will be made whether there is prima facie evidence that an overpayment is the result of a false certification. When the decision is in the affirmative the school will be notified in writing of the Veterans Administration's intent to apply the liability provisions of 38 U.S.C. 1766. The notice will also state that unless a written request for hearing is filed within 30 days of the receipt of such notice, a determination of liability will be made on the evidence of record. The case will then be referred to the Committee

on Waivers for the field station having jurisdiction where the school is located.

(d) *Committees on waivers.* If the overpayment amounts to less than \$2,500, and jurisdiction is not assumed by Central Office, Chairmen and Section Chairmen, Committees on Waivers in the field stations having jurisdiction over the school are authorized to find:

(1) Whether recovery may be waived as to the eligible person.

(2) Liability of the school.

(3) Liability of both the eligible person and the school.

(e) *Extent of liability.* Waiver of collection of an overpayment as to an eligible person will not relieve the school of liability for the overpayment. Recovery in whole or in part from the eligible person will limit such liability accordingly. If an overpayment has been recovered from the school and the eligible person subsequently repays the amount in whole or in part, the amount recovered from the eligible person will be reimbursed to the school.

(f) *Notice to school.* If the school is found liable for an overpayment, the school will be notified of the decision and the right to request an administrative review of the decision within 60 days from the date notice of the decision is mailed to the school. The 60-day time limit may be extended to 90 days at the discretion of the Liability Review Section, Compensation, Pension and Education Service. The request must be in writing, setting forth fully all of the contentions and errors assigned.

(g) *Liability Review Section.* Administrative reviews will be conducted by the Liability Review Section, whose decisions will serve as authority for instituting collection proceedings, if appropriate, or to discontinue collection proceedings instituted on the basis of the original decision of the regional Committee on Waivers in any case where the Review Section reverses a finding made by the regional Committee that the school is liable.

(h) *Review and modification.* The Liability Review Section may review and modify its decision upon submission of new and material evidence. The regional Committee will forward such evidence with its recommendation.

CROSS REFERENCE: *Waiver of overpayments.* See § 3.1008 of this chapter.

GENERAL

§ 21.3020 Educational assistance.

(a) *General.* A program of education or special restorative training may be authorized for a child whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces after the beginning of the Spanish-American War and prior to the end of the induction period. (38 U.S.C. 1701(d).) The requirements of basic eligibility of a child are set forth in § 3.807 of this chapter.

(b) *36-month limitation.* Educational assistance may not exceed a period of

36 months, or the equivalent in part-time training, unless it is determined that a longer period is required for special restorative training under the circumstances outlined in § 21.3300(c). (38 U.S.C. 1711(a), 1741(b).)

(c) *Training in a foreign country.* A course to be pursued at a school not located in a State or in the Philippines may not be approved except under the circumstances outlined in § 21.3252(e).

§ 21.3021 Definitions.

(a) "Eligible person" means a child of a veteran who died of a service-connected disability or has a total disability permanent in nature arising from a service-connected disability or who died while a disability so evaluated was in existence, arising out of active military, naval or air service after April 20, 1898 and prior to the end of the induction period. See §§ 3.6 and 3.807 of this chapter. (38 U.S.C. 1701(a).)

(b) "Parent or guardian" means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 1701(a)(4)) or it may be the eligible person himself.

(1) The term includes the eligible person if he has attained his majority under laws applicable in his State of residence as shown on his application and is under no known legal disability (38 U.S.C. 1701(b)). Also the eligible person himself may be designated as the person by whom required actions may be taken even though he has not attained his majority, or having attained his majority, is under a legal disability, when it is determined that to do otherwise would not be in his best interest, would result in undue delay or would not be administratively feasible.

(2) Where necessary to protect his interest and there is reason why the eligible person should not act for himself, some other individual may be designated as the person by whom required actions should be taken (38 U.S.C. 1701(c)).

(c) "Armed Forces," as to service by the eligible person, means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the Reserve components of each, the National Guard of the United States and the Air National Guard of the United States. (38 U.S.C. 1712 (a) and (b).)

(d) "Duty with the Armed Forces," as to service by the eligible person, means active duty, active duty for training for a period of 6 or more consecutive months, or an initial period of active duty for training of not less than 3 months or more than 6 months in the Ready Reserve. (38 U.S.C. 1701(a)(3); 1712 (a) and (b)). See §§ 21.3041 and 21.3042.

(e) "State" means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the Canal Zone. (38 U.S.C. 101(20) and 1701(a)(8).) (Although the Republic of the Philippines is not included in the definition of a State,

eligible persons may pursue courses of training in that country.)

CROSS REFERENCES: *Duty periods.* See § 3.6 of this chapter.

Persons included. See § 3.7 of this chapter. *Philippine and insular forces.* See § 3.8 of this chapter.

§ 21.3022 Nonduplication; vocational rehabilitation.

A person who is eligible for educational assistance under 38 U.S.C. ch. 35 and is also eligible for vocational rehabilitation training under 38 U.S.C. ch. 31 must elect whether he will receive educational assistance or vocational rehabilitation. See § 21.21.

§ 21.3023 Nonduplication; pension, compensation and dependency and indemnity compensation.

(a) *Age 18.* A person who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation, or dependency and indemnity compensation to or on account of an eligible person after his 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) *Under 18 or helpless.* Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the service of more than one parent in the same parental line, concurrent payments may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance is a bar to subsequent payments of pension, compensation or dependency and indemnity compensation on account of the child in that case, but does not preclude subsequent payment of such benefits based on the service of another parent in the same parental line.

(c) *Election.* The Commencement of a program of education constitutes an election.

(1) Except as provided in subparagraph (2) of this paragraph, an election is final when one payment has been made to or for an eligible person or as an administrative allowance. Payment is considered to have been made for an administrative allowance when the school has submitted a certification of the eligible person's enrollment or a monthly certification of training, thereby obligating the Veterans Administration for payment of such allowance.

(2) An election based on erroneous information furnished by an authorized representative of the Veterans Administration is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of educational assistance may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran's death.

CROSS REFERENCE: War orphans' educational assistance; discontinuance. See § 3.503(h) of this chapter.

War orphans' educational assistance; concurrent payments. See § 3.707 of this chapter.

War orphans' educational assistance; certification. See § 3.807 of this chapter.

§ 21.3024 Nonduplication; Bureau of Employees' Compensation.

The provisions of this section are applicable to cases where there is eligibility for benefits from the Bureau of Employees' Compensation based on the disability or death of the veteran from whom eligibility for educational assistance is derived.

(a) *Child.* A person who is eligible for educational assistance and is also eligible for Bureau of Employees' Compensation benefits in his own right must elect which benefit he will receive.

(b) *Veteran and child; widow and child.* An eligible person may receive educational assistance concurrently with payment of Bureau of Employees' Compensation benefits to a veteran or widow.

(c) *Election.* An election of Bureau of Employees' Compensation benefits filed on or after September 13, 1960 is a bar to subsequent payments of educational assistance (5 U.S.C. 757).

CROSS REFERENCE: Bureau of Employees' Compensation. See § 3.708 of this chapter.

§ 21.3025 Nonduplication; Federal programs.

Educational assistance is subject to the restrictions contained in § 21.22 with respect to an eligible person who is pursuing a course of education or training under a Federal program. (38 U.S.C. 1762(b).)

CLAIMS

§ 21.3030 Claims.

A specific claim in the form prescribed by the Administrator must be filed by the parent or guardian in order for educational assistance allowance or special

restorative training allowance to be paid. (38 U.S.C. 1713.)

§ 21.3031 Informal claims.

(a) Any communication from a parent or guardian, an authorized representative or a Member of Congress indicating an intent to apply for educational assistance for an eligible person may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the parent or guardian for execution. If received within 1 year after the date it was sent to the parent or guardian, it will be considered filed as of the date of receipt of the informal claim.

(b) The act of enrolling in an approved school does not, in itself, constitute an informal application.

§ 21.3032 Time limits.

(a) *Completion of claim.*—(1) *Processing time.* If, after filing application, the eligible person, for other than a reason determined by the Veterans Administration to have been beyond his control, fails to report for a scheduled counseling appointment or fails to submit an educational plan within 60 days after the date on which a counseling certificate is executed, the application will be considered abandoned for the purpose of computing processing time. If the eligible person reports after the 60-day period but within 1 year of filing application, the date of reporting for counseling will be considered the appropriate date from which to compute processing time.

(2) *Claim or request for change.* When counseling is delayed by an eligible person for 12 or more months, for other than a reason beyond his control, the application or request for change of program will be considered abandoned.

(3) *Reopening.* Where an application has been considered abandoned under subparagraph (2) of this paragraph, any subsequent communication from the parent, guardian or eligible person requesting a program of education will be considered a new application. The date of receipt of such later communication will be considered the date of application.

(b) *Failure to furnish claim or notice of time limit.* Failure to furnish any form or information concerning the right to file claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

CROSS REFERENCES: Notice to claimants. See § 3.103 of this chapter.

Computation of time limit. See § 3.110 of this chapter.

ELIGIBILITY AND ENTITLEMENT

§ 21.3040 Eligibility.

(a) *Commencement.* A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the

eligible person will be served by entering training at an earlier date and the eligible person has passed:

(1) Compulsory school attendance age under State law; or

(2) His 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.

(b) *Secondary schooling.* "Completion of secondary schooling" means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent—usually completion of the 12th grade in the public school system.

(c) *Age limitation for commencement.* No person is eligible for educational assistance who reached his 23d birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, whichever is applicable.

(d) *Termination of eligibility.* No person is eligible for educational assistance beyond his 31st birthday, except as provided under § 21.3041 (d) and (e). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 36 months. See § 21.3300.

§ 21.3041 Periods of eligibility.

(a) *Basic beginning date.* The eligible person's 18th birthday or successful completion of secondary schooling, whichever first occurs. See paragraph (b) of this section and § 21.3040 (a) and (b).

(b) *Exceptions to basic beginning date.* (1) Person has passed compulsory school attendance under applicable State law, or

(2) Person has passed 14th birthday and has physical or mental handicap. See § 21.3040(a).

(c) *Basic ending date.* The eligible person's 23d birthday.

(d) *Modified ending date.* When one of the following occurs between ages 18 and 23, the ending date will be 5 years from the applicable ending date specified in this paragraph. Where the ending date is subject to modification under more than one of subparagraphs (3), (4), or (5) of this paragraph, the more favorable date will apply.

(1) Effective date of permanent total rating of veteran-parent. (Even in case of veteran's death the effective date of permanent total rating applies.)

(2) Death of veteran-parent.

(3) Date of first unconditional discharge or release from "duty with the Armed Forces" served between ages 18 and 23 as an eligible person. See § 21.3042.

(4) Enactment of Public Law 88-361 on July 7, 1964, providing eligibility based on permanent total disability; that is, July 6, 1969. See § 3.807 of this chapter.

(5) Enactment of Public Law 89-349 on November 8, 1965, providing eligibility based on peacetime service after the Spanish-American War and prior to

September 16, 1940; or during World War I or World War II solely by reason of the provisions of 38 U.S.C. 301; that is November 7, 1970. See § 3.807 of this chapter.

(e) *Extensions to ending dates.* (1) Suspension of program due to conditions determined by the Veterans Administration to have been beyond the person's control (see § 21.3043): Extended for length of period of suspension, but not beyond age 31. See § 21.3040(d).

(2) Processing time:¹ Extended by length of processing time, but not beyond age 31. See § 21.3040(d).

(3) Period of eligibility ends during last half of quarter or semester, or during last half of course not operating on quarter or semester system: Extended to end of quarter or semester for schools operating on quarter or semester system, or end of course or for 9 weeks, whichever is earlier, for schools not operating on quarter or semester system. Extension may be authorized beyond age 31, but may not exceed maximum entitlement.² See § 21.3044(a).

§ 21.3042 Service with Armed Forces.

(a) No educational assistance may be provided an otherwise eligible person during any period he is on duty with the Armed Forces. See § 21.3021 (c) and (d). This does not apply to brief periods of active duty for training. See § 21.3135(j).

(b) If the eligible person served with the Armed Forces, his discharge or release from each period of service must have been under conditions other than dishonorable (38 U.S.C. 1712(b)).

(c) The term "unconditional discharge", as used in § 21.3041 means unconditional discharge or release from duty with the Armed Forces. See § 3.13 of this chapter.

(d) For the eligible person called to active duty after July 30, 1961, and before August 1, 1962, by (1) an order issued to him as a Reserve or (2) an extension of an enlistment, appointment or period of duty pursuant to section 2 of Public Law 87-117, 75 Stat. 243 ("Berlin Crisis") the extended period under § 21.3041 will be further extended by the number of months and days served during such period.

§ 21.3043 Suspension of program.

For an eligible person who suspends his program due to conditions determined by the Veterans Administration to have been beyond his control the period of eligibility may, upon his request, be

¹ "Processing time" means the period of time which elapses between the eligible person's 18th birthday or the date of receipt of the application, whichever is later, and the date on which the Certificate for a Program of Education is signed by an authorized official.

² Such extension applies, without regard to whether the midpoint of the quarter, semester, or course has been reached, when a son or daughter who, while enrolled, ceases to be an eligible person because the parent from whom eligibility is derived is found to no longer have a "total disability permanent in nature." (§ 21.3135(k).)

suspended by the number of months and days intervening the date the suspension began and the date the reason for suspension ceased to exist. The burden of proof is on the eligible person to establish that suspension of a program was due to conditions beyond his control. The period of suspension shall be considered to have ended as of the date of the person's first available opportunity to resume training after the condition which caused it ceased to exist. The following circumstances may be considered as beyond the eligible person's control:

(a) While in active pursuit of a program of education he is appointed by the responsible governing body of an established church, officially charged with the selection and designation of missionary representatives, in keeping with its traditional practice, to serve the church in an official missionary capacity and is thereby prevented from pursuit of his program of studies.

(b) Immediate family or financial obligations beyond his control require him to take employment, or otherwise preclude pursuit of his program.

(c) Unavoidable conditions arising in connection with his employment which preclude pursuit of his program.

(d) Pursuit of his program is precluded because of his own illness or illness or death in his immediate family.

(e) Active duty, including active duty for training in the Armed Forces.

§ 21.3044 Entitlement.

(a) Each eligible person is entitled to educational assistance for a period not in excess of 36 months, or the equivalent thereof in part-time training. The period of entitlement will be reduced by the full-time equivalent of any period of vocational rehabilitation received by him under 38 U.S.C. chapter 31. The period of entitlement will not be reduced by any period during which subsistence allowance was paid after determination of employability following such vocational rehabilitation (38 U.S.C. 1711(b)).

(b) The 36-month period of entitlement is any 36 months within the period of eligibility. The eligible person is not required to pursue his program in the period of 36 consecutive months.

CROSS REFERENCE: Special restorative training. See § 21.3300.

§ 21.3045 Entitlement charges.

Charges against entitlement of an eligible person pursuing a program of education will be made in terms of months and days for periods during which the person is carried in training status. Where a program of education or training is pursued on a full-time basis the total elapsed time will be charged against the eligible person's entitlement. Where a program of education or training is pursued on a three-fourths or one-half time basis, a proportionate rate of the elapsed time will be charged against the eligible person's entitlement. A fraction of more than one-half day in the final result will be counted as 1 day. A fraction of one-half day or less will be disregarded.

COUNSELING

§ 21.3100 Counseling.

(a) Counseling is required for each eligible person before an application for educational assistance may be approved. The purpose of counseling will be to assist in selecting an objective, in developing a suitable program of education, and in resolving any personal problems which are likely to interfere with selection or successful pursuit of a program of education. The counselor will assist in preparing an educational plan, if requested by the eligible person, his parent or guardian.

(b) When an eligible person fails to report for required counseling or fails to cooperate in the counseling process, further action on the application will not be taken.

(c) Travel at Government expense to and from the place of counseling may be authorized for an eligible person whenever counseling is required but not when provided on the basis of a voluntary request alone.

CROSS REFERENCE: Veterans Administration guidance centers. See § 21.735.

§ 21.3101 Special training.

(a) Counseling will be provided a handicapped person before a case is referred to the Vocational Rehabilitation Board for consideration of need for a course of specialized vocational training or for special restorative training.

(b) When an eligible person completes or discontinues a course of special restorative training without having selected an objective and program of education, additional counseling will be provided to assist in selecting a program of education.

CROSS REFERENCE: Vocational Rehabilitation Board. See §§ 21.256 and 21.715.

§ 21.3102 Counseling for change or reentrance.

(a) Additional counseling will be required before taking action upon a request for a change of program unless, on review of the counseling record by a counselor, it is found that the change requested is from a program that was not considered suitable in the initial counseling to a program which is supported by the counseling data and there is no other evidence of need for additional counseling.

(b) Additional counseling will be required before taking action upon a request for reentrance after discontinuance because of unsatisfactory conduct or progress in a program of education.

(c) The counselor will recommend approval of requests for change of program or reentrance into training when it is determined that there is reasonable expectation that pursuit of a program of education which is suitable for the eligible person will be successful. When a program has been discontinued because of misconduct, reentrance will be recommended where the counselor finds a reasonable basis for assurance that misconduct will not recur. Otherwise, the case will be referred to the Vocational Rehabilitation Board for determination.

§ 21.3103 Counseling on request.

Additional counseling not required by Veterans Administration Regulations may be provided upon request so long as the counselor determines that it will aid the eligible person in obtaining maximum benefit from the pursuit of a program of education.

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE**§ 21.3130 Educational assistance allowance; authorization.**

The parent or guardian will be paid educational assistance allowance at the rate specified in § 21.3136 while the eligible person is in training. Educational assistance allowance will not be paid based on a course not leading to a standard college degree, for any day of absence in excess of a rate of 30 days in a 12-month period, as determined under § 21.3205(b).

(a) The commencing date of authorization will be the date of entrance or reentrance into a course as determined under § 21.3131.

(b) The closing date will be the earliest of the following dates:

(1) The ending date of the course or period of enrollment as certified by the school.

(2) The ending date of eligibility as determined under § 21.3041.

CROSS REFERENCE: Authorization. See § 21.3203(c).

§ 21.3131 Commencing dates.

The commencing date of an award of educational assistance allowance will be determined under this section.

(a) *Entrance or reentrance including change of program or school (§ 21.3234).*

(1) The date certified by school as provided in paragraph (b) or (c) of this section, or date of approval of course, whichever is later, if application for entrance or reentrance or request for change is received not later than 15 days after date certified by school and notice of State approving agency's approval is received not later than 60 days after date of approval.

(2) If time limits specified in subparagraph (1) of this paragraph are not met, the date of receipt of application or request for change, or 60 days prior to receipt of notice of approval by State approving agency.

(3) The time limits specified in subparagraphs (1) and (2) of this paragraph may be waived under § 21.3132.

(b) *Certification by school; course leads to standard college degree.* The date of registration, or the date of reporting where the student is required by published standards of the school to report in advance of registration, but not later than the date the person first reports for classes.

(c) *Certification by school; course does not lead to standard college degree.* First date of class attendance.

(d) *Reopened application after abandonment (§ 21.3032).* The date the eligible person reports for counseling if pursuing an approved course.

(e) *Liberalizing laws and Veterans Administration issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

§ 21.3132 Waiver of time limits.

The time limits specified in § 21.3131 (a) may be waived under the following circumstances:

(a) *Eligible person.* If the facts, equities and demonstrated good faith on the part of the parent, guardian, or eligible person warrant such waiver.

(b) *State approving agency.* If the facts, equities and demonstrated good faith on the part of the parent, guardian, or eligible person and the State approving agency warrant such waiver, and

(1) Approval action was not denied or withheld for cause during the retroactive period, and

(2) Credit is granted toward completion of the course from the date of approval.

§ 21.3133 Change of rate.

An increase or reduction in the monthly rate of educational assistance allowance because of a change in the extent of the course being pursued, e.g., change from full-time to part-time pursuit of a course, will be effective the date the change occurred.

§ 21.3134 Withholding and discontinuance.

Notwithstanding the approval of a course by a State approving agency, educational assistance of any eligible person may be discontinued if it is determined that the course of education in which the individual is enrolled fails to meet, or the school has violated, any of the requirements for approval. Where preliminary evidence indicates that it would be to the best interests of the Government, the station head may withhold further payments to eligible persons enrolled in the school until a determination has been made as to whether approval should be withdrawn and whether overpayments exist. Payments for eligible person will be promptly released whenever the facts developed justify such action.

§ 21.3135 Discontinuance dates.

The effective date of discontinuance of educational assistance allowance will be as follows. If more than one type of discontinuance is involved, the earliest date will control.

(a) *Death of eligible person.* Last date of attendance.

(b) *Discontinued.* Last date of attendance or, if training certified for ordinary school year and eligible person has completed one or more terms, but does not return for the next term, discontinuance will be effective the end of the term completed.

(c) *Unsatisfactory progress (§ 21.3277).* The date the eligible person is dropped by the school or the date of administrative determination by the Veterans Administration, whichever is earlier.

(d) *Monthly certifications not received after certification of enrollment (§ 21.3203).* (1) The end of the first reporting period if no certifications are received for first two reporting periods.

(2) The end of the month for which the last payment was properly made, if payments have been made for one or more periods and certifications are not received for two consecutive reporting periods.

(e) *False or misleading statements.* See § 21.3006.

(f) *Disapproval by State approving agency (§ 21.3257(a)).* Effective date of disapproval or date of receipt of notice of disapproval, whichever is later.

(g) *Disapproval by Veterans Administration (§§ 21.3207 and 21.3257(c)).* Date of disapproval.

(h) *Conflict of interest (not waived) (§ 21.3005(e)).* 30 days after date of letter notifying eligible person, unless terminated earlier for other reason.

(i) *School listed by Attorney General (§ 21.3201).* Day before date of listing.

(j) *Active duty (§ 21.3042).* Day before entrance on active duty. (Does not apply to brief periods of active duty for training if school permits such absence without interruption of training; however where course does not lead to standard college degree, the absence must be reported as required by § 21.3205.)

(k) *Veteran no longer rated permanent total disabled (§ 21.3041).* (1) End of quarter or semester if school is operated on quarter or semester system.

(2) End of course or 9 weeks whichever is earlier, if school is not operated on quarter or semester system.

(l) *Error; payee's or administrative.* (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his knowledge.

(2) Date of last payment on an erroneous award based solely on administrative error or error in judgment.

(m) *Fraud; forfeiture resulting (§ 21.3007).* Beginning date of award or day preceding date of fraudulent act, whichever is later.

(n) *Treasonable acts or subversive activities; forfeiture (§ 21.3007).* Beginning date of award or date preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.

§ 21.3136 Rates.

Type of course	Monthly rate of educational assistance allowance		
	Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time
Institutional ¹	\$130.00	\$95.00	\$60.00
Cooperative ²	105.00	None	None

¹ No educational assistance allowance will be paid for less than $\frac{1}{2}$ time.

² No educational assistance allowance will be paid for less than full time in a cooperative course.

§ 21.3137 Certifications.

Educational assistance will be paid to or on behalf of an eligible person for any

period only after the Veterans Administration has received a report from the school which shows that the eligible person has been pursuing his course. The report must be certified by the eligible person and the school on a form provided by the Veterans Administration for that purpose. On certifications of enrollment, periodic certifications and absences, see §§ 21.3203, 21.3204, and 21.3205 respectively.

§ 21.3138 Payee; guardian or eligible person.

(a) The educational assistance allowance will be paid to the parent or guardian of the eligible person; to a person recognized as legal custodian; to the eligible person himself if he has attained his majority and has no known legal disability; or to the person designated under paragraph (b) of this section. The minority of a person who has been discharged from the Armed Forces will not preclude direct payment of educational assistance allowance to him.

(b) When it is found that it would be to the best interest of the eligible person, such eligible person will be designated as the one to whom payment will be made unless there is some known reason why he should not be so designated. In this event, a suitable person will be designated.

§ 21.3139 Apportionment.

Educational assistance allowance is not subject to apportionment.

§ 21.3140 Offsets; pension, compensation, and dependency and indemnity compensation.

Payment of educational assistance allowance will be subject to offset of amounts of pension, compensation, or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.

CROSS REFERENCE: Discontinuance of pension, compensation, or dependency or indemnity compensation. See § 3.503(h) of this chapter.

STATE APPROVING AGENCIES

§ 21.3150 Designation.

(a) The Chief Executive of each State is requested to create or designate a State department or agency as the "State approving agency" for his State, for the purpose of assuming the responsibilities delegated to the State under 38 U.S.C. ch. 35, subch. VII, or if the law of the State provides otherwise, to indicate the agency provided by such law. (38 U.S.C. 1771(a).)

(b) The Chief Executive of each State will notify the Veterans Administration of any change in the designation of a State approving agency.

(c) If any State does not have and fails or declines to create or designate a State approving agency, the provisions of 38 U.S.C. ch. 35 which refer to the State approving agency will, with respect to such State, be deemed to refer to the Administrator (38 U.S.C. 1771(b)). See § 21.3001(c).

(d) Any function, power or duty otherwise required to be exercised by a State,

or by an officer or agency of a State, will, with respect to the Republic of the Philippines, be exercised by the station head.

CROSS REFERENCE: Approval of courses. See § 21.3250.

§ 21.3151 Cooperation.

(a) The Veterans Administration and the State approving agencies will take cognizance of the fact that definite duties, functions and responsibilities are conferred upon each of them. To assure that programs of education are administered effectively and efficiently, the cooperation of the Veterans Administration and the State approving agencies is essential. (38 U.S.C. 1773(a).)

(b) State approving agencies are responsible for inspecting and supervising schools within the borders of their respective States and for determining those courses which may be approved for the enrollment of eligible persons. They are also responsible for ascertaining whether a school at all times complies with its established standards relating to the course or courses that have been approved.

(c) The Veterans Administration will furnish State approving agencies with copies of such Veterans Administration informational and instructional material as may aid them in carrying out the provisions of 38 U.S.C. ch. 35. (38 U.S.C. 1773(b).)

§ 21.3152 Control by agencies of the United States.

(a) No department, agency, or officer of the United States will exercise any supervision or control over any State approving agency or State educational agency, or any educational institution. (38 U.S.C. 1763.)

(b) The provisions of paragraph (a) of this section do not restrict the authority conferred on the Veterans Administration:

(1) To define full-time training in certain courses.

(2) To determine whether overcharges were made by a school and to disapprove the school for enrollment of eligible persons not previously enrolled. See § 21.3202.

(3) To determine whether the State approving agencies under the terms of contract or reimbursement agreements are complying with the standards and provisions of the law.

(4) To examine the records and accounts of schools which are required to be made available for examination by duly authorized representatives of the Federal Government.

(5) To disapprove schools or courses for reasons stated in the law and to approve schools or courses notwithstanding lack of State approval.

§ 21.3153 Reimbursement of expenses.

(a) General. If a State or local agency requests to be paid for service contemplated by the law, and submits information prescribed in paragraph (e) of this section, contracts or agreements will be negotiated with such State agencies to pay for the reasonable and nec-

essary expenses of salary and travel incurred by its employees in:

(1) Determining the qualifications of educational institutions for furnishing courses of training to eligible persons and in the supervision of such educational institutions. Supervision for which reimbursement may be made will consist of services required in determining that the courses are furnished in accordance with the criteria set forth in the law or prescribed by the State approving agencies pursuant to the law and upon which the original approval was granted, and of those services required in disapproving any courses which fall below the established criteria.

(2) Furnishing any other services in connection with the law as may be requested by the Veterans Administration.

(b) *Reimbursement.* The Chief Benefits Director is authorized to enter into agreements for reimbursement to the extent necessary to fulfill the purpose of paragraph (a) of this section.

(c) *Reimbursable expenses.* Reimbursement may be made from the funds provided in the existing contract with the State approving agency under the provisions of this section. No reimbursement may be authorized for expenses incurred by any individual who is not an employee of the State approving agency.

(1) *Salaries.* Salaries for which reimbursement may be authorized under contract will not be in excess of the established rate of pay for other employees of the State having comparable or equivalent duties and responsibilities and will further be limited to the actual salary expense incurred by the State.

(2) *Travel.* Travel expenses for which reimbursement may be authorized under contract will be determined on the basis of expenses allowable under applicable State laws or travel regulations of the State or agency and will be for travel actually performed by employees specified under the terms of the contract. Reimbursement for travel will be provided only to cover actual expenses for transportation, meals, lodging, and local telephone calls, or the regular per diem allowance in lieu thereof. In claiming reimbursement for travel authorized under the terms of a contract, all claims must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency. Reimbursement will be made for expenses of attending out-of-State meetings and conferences only where the travel is performed upon prior approval and at the request of the Director, Compensation, Pension and Education Service.

(3) *Committee assignments.* Reimbursement may also be authorized for the salary and travel of the employee of the State approving agency serving as a designated member of the field station Committee on Educational Allowances.

(d) *Nonreimbursable expenses.* Reimbursement will not be provided under reimbursement contracts for:

(1) Expenditures other than salaries and travel of personnel required to perform the services specified in the contract and Veterans Administration regulations.

(2) Supplies, equipment, printing, postage, telephone services, rentals, and other miscellaneous items or a service furnished directly or indirectly.

(3) Except as provided in paragraph (c) (2) of this section, the salaries and travel of personnel while attending training sessions, or when they are engaged in activities other than: Those in connection with the inspection, approval, or supervision of educational institutions; or services rendered as members of a field station Committee on Educational Allowances.

(4) The supervision of educational institutions which do not have eligible persons enrolled.

(5) Expenses incurred in the administration of an educational program which are costs properly chargeable as tuition costs, such as the development of course material or individual educational programs, teacher training or teacher improvement activities, expenses of coordinators, or administrative costs, such as those involving selection and employment of teachers. (This does not preclude reimbursement for expenses of the State agency incurred in the development of standards and criteria for the approval of courses under the law.)

(6) Expenses of a State approving agency for inspecting, approving, or supervising courses where such agency is responsible for establishing, conducting, and supervising the courses approved.

(7) Any expense for supervision or other services to be covered by contract which are already being reimbursed or paid from tuition funds under this law.

(e) *Agency operating plan.* A request by a State approving agency for reimbursement under the law will be accompanied by the proposed plan of operation and the specific duties and responsibilities of all personnel for which reimbursement of salaries and travel expense is required.

(1) Personnel requirements for which reimbursement is to be provided will be determined on the basis of estimated workloads as agreed upon between the Veterans Administration and the State agency. Such agreements will be subject to constant review and any necessary adjustment.

(2) Workloads will be determined upon three factors: (i) Inspection and approval visits, (ii) supervisory visits, and (iii) special visits at request of the Veterans Administration.

(f) *Contract compliance.* Reimbursement under each contract or agreement will be conditioned upon compliance with the standards and provisions of the contract and the law. If it is determined that the State has failed to comply with the standards and provisions of the law and with the terms of the reimbursement contract, the station head will withhold reimbursement for claimed expenses under the contract. In any instance in which the State takes exception to the field station action, the matter will

be referred to the Director, Compensation, Pension and Education Service, for review.

SCHOOLS

§ 21.3200 Definition.

(a) *School.* The term "educational institution" or "school" means any public or private secondary school, vocational school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or any other institution if it furnishes education at the secondary school level or above. (38 U.S.C. 1701(a)(6).) The term also includes institutions which provide specialized vocational courses for the mentally handicapped generally recognized as on the secondary school level or above.

(b) *Quarter; semester.* The terms mean:

(1) "Quarter", a division of the ordinary school year, usually a period from 10 to 13 weeks long.

(2) "Semester", a division of the ordinary school year, usually a period from 15 to 19 weeks long.

(3) "Summer quarter" (term or session), the whole of the summer period of instruction specified for the course in which the eligible person is enrolled, without regard to any divisions of such a period which may be made by the institution for administrative or other purposes.

§ 21.3201 Institutions listed by Attorney General.

Enrollment may not be approved for a course in a school while it is listed by the Attorney General under section 3, part III, Executive Order 9835, as amended. (38 U.S.C. 1726.)

§ 21.3202 Overcharges.

(a) When it is found that a school has charged or received from any eligible person any amount in excess of the established charges for tuition and fees which the school requires from similarly circumstanced noneligible persons enrolled in the same course, the school may be disapproved for enrollment of any person not already enrolled in the school. (38 U.S.C. 1734(a).) See § 21.3207.

(b) A school will be disapproved for further enrollments or reenrollments, and educational allowances to eligible persons already enrolled will be discontinued when one or more of the following conditions has been found to exist:

(1) The school has willfully and knowingly submitted a false report or certification concerning an eligible person or his course of training which has or could result in an improper payment of allowances.

(2) The school has willfully and knowingly failed to report to the Veterans Administration excessive absences, discontinuance, or interruption of training, which has resulted or could result in improper payment of allowances.

(3) The institution or establishment through gross negligence has submitted improper or incorrect reports which have resulted or could result in improper pay-

ment of allowances to an eligible person. This condition will not be found to exist where:

(i) The improper report occurs only in an isolated instance or instances; or

(ii) It is the first occurrence and the institution or establishment has not been previously notified in writing; or

(iii) The improper report or reports represent a very small proportion of the reports submitted by the institution or establishment and may be attributed to clerical errors and are shown not to be the result of failure upon the part of the institution or establishment to provide and maintain a recording and reporting procedure which under normal circumstances would result in proper reports to the Veterans Administration.

(4) The institution or establishment has, after being notified in writing of a violation of a provision of law or of failure of a course to meet the specific requirements of law other than approval criteria, failed to correct the situation within 30 days of date of such notice or has knowingly and willfully repeated the violation.

(5) The institution, after having been disapproved for the enrollment of any veteran or eligible person not already enrolled therein, has willfully and knowingly repeated the violation.

(6) The institution or establishment fails or refuses to make available for examination to duly authorized representatives of the Government records and accounts pertaining to the training of eligible persons enrolled therein under chapter 35.

(7) The requirements of 38 U.S.C. 1772, 1775, or 1776 are not being met in respect to a substantial number of eligible persons, written notice having been given to the State approving agency as to specific violations and such violations have not been eliminated within 30 days following such notice or 60 days following such notice when the station head determines that conditions warrant allowing the additional time to take corrective action.

§ 21.3203 Reports by schools; requirements.

(a) *General.* Educational institutions are required to report promptly the entrance, reentrance, interruption and termination of attendance of each eligible person who is enrolled. Educational assistance allowance is payable only after the Veterans Administration has received the required certification that the eligible person has been pursuing his course.

(b) *Entrance or reentrance.* The certification must clearly specify the program objective. Upon receipt of a certification of enrollment, an official authorization will be issued showing the beginning and ending dates of each period for which an allowance may be paid. Notice will be sent to the eligible person and the school. The authorization will include the period of enrollment or the extent of the eligible person's entitlement, whichever is the lesser.

(1) Schools organized on a term, quarter or semester basis may report enrollment for the term, quarter or semester, or for the ordinary school year. Enroll-

ment certifications for the ordinary school year are encouraged. A summer session may not be included as part of the ordinary school year but must be reported separately.

(2) Schools organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the school closes for summer vacation, the dates of any intervals between periods of instruction which occur in the summer and any intervals designated in the school's approval data as breaks between school year. No allowances are payable for these intervals.

(c) *Monthly certification.* A certification must be submitted monthly for each eligible person enrolled in and pursuing a course. See § 21.3204.

(d) *Adequacy of certification.* The report must consist of a certification containing the information required for release of payment signed by the eligible person and the school on or after the final date of the reporting period. The date on which each person signed must be clearly shown. The only exception to the requirement of two signatures is a certification of interruption of training when the eligible person is not available for signature. The date of interruption or termination of training must be reported on the certification for the month in which the event occurred.

§ 21.3204 Monthly certifications.

(a) *Reports.* The monthly certification required by § 21.3203 will include a report on:

(1) Continued enrollment in and pursuit of the course.

(2) Absences, if required. See § 21.3205.

(3) Conduct and progress. See § 21.3277.

(4) Date of interruption or termination of training.

(5) Changes in number of semester or clock-hours of attendance.

(6) Any other changes or modifications in the course as certified at enrollment.

(b) *Term, quarter or semester.* If a school organized on a term, quarter or semester basis has reported enrollment:

(1) For the ordinary school year, in a course leading to a standard college degree, the monthly certification will show that the eligible person was enrolled in and pursuing his course for the intervals between terms, quarters, or semesters. This does not apply to intervals between the ordinary school year and a summer session. In a course which does not lead to a standard college degree, the days of the intervals will be reported as absences.

(2) By terms, quarter or semester, the monthly certification will not cover the intervals between terms, quarters or semesters.

(c) *Year-round courses.* Where appropriate the monthly certification will show the dates on which the school closed for summer vacation, the date of any intervals between periods of instruction which occurred in the summer, and the dates of any intervals which are designated in the approval data as breaks between school years.

§ 21.3205 Absences.

Absences must be reported on the monthly certification of pursuit of a course which does not lead to a standard college degree.

(a) *General.* Absence will be charged for a full day when the eligible person did not attend any scheduled class on that day. Tardiness will be charged when the eligible person was late for the start of the schoolday. A partial day of absence will be charged for any period of absence during or at the end of a day.

(b) *Maximum allowable absences.* Maximum allowable absences will be determined as provided in this paragraph.

(1) For a 12-month course requiring attendance for 5 or more days a week, 30 days.

(2) For a 12-month course requiring attendance for less than 5 days a week, the pro rata part of 30 days which the number of days per week of scheduled attendance bears to 5.

(3) If the length of the course is not 12 months or a multiple of 12, allowable absences shall be figured separately for each 12-month period and for any period which is less than 12 months.

(4) In computing pro rata allowances a fraction of one-half day or less will be disregarded. A fraction greater than one-half day will be counted as 1 day.

(5) Unused allowable absences may not be carried over from one 12-month period to another, or from one school year to another.

(c) *Reporting.* (1) Eligible persons must report each full day of absence from scheduled training as well as days when the school was closed for Federal, State or local holidays and school holidays and intervals between terms, quarters or semesters. When the school is closed for the weekend, those days will not be reported. However, if classes are normally scheduled for Saturday and Sunday, absences must be reported.

(2) The school will verify the full days of absence reported and endorse the report. In addition, the school will convert partial days of absence to full days in accordance with the following formula and report the accumulated total.

(i) Compute the average hours of daily attendance. (Divide the hours of required attendance per week by the days of required attendance per week.)

(ii) Total the absences of less than a full day which occurred during the month. (See subparagraph (3) of this paragraph.)

(iii) Divide the total hours of absence for the month (subdivision (ii) of this subparagraph) by the average hours of daily attendance (subdivision (i) of this subparagraph) to determine the full days of absence to be reported.

(3) An occasional tardiness (not more than two per week) of one-half hour or less will not be counted if it is excused by the school. Tardiness which is not excused and tardiness of more than one-half hour, whether excused or not, will be counted as one or more hours of absence. Absences during any portion of the day will be counted, whether more or less than an hour. All early departures will be counted, even though

excused. Except for tardiness, any absence of less than an hour will be counted as a full hour of absence.

§ 21.3206 Administrative allowance for certification.

The Veterans Administration will pay to each school which is required to submit certifications an allowance at the rate of \$1 per month for each eligible person enrolled in and attending the school. Not more than one allowance will be paid for any one month for each eligible person. Allowances will be paid in the manner and at such time as the Veterans Administration may prescribe. If a school fails to submit the required certification, no monthly allowance will be paid for the month or months in which no certifications were received.

(a) Where an eligible person is enrolled or reenrolled on or after the 20th of the month, a separate monthly certification for that month is not required. An administrative allowance for that month may be paid if a certification of enrollment or reenrollment is received not later than the 10th of the following month. Where a school submits a monthly certification which combines a partial month of 10 days or less at the end of a term with the immediately preceding month, an administrative allowance may be paid for each month covered by the certification.

(b) An administrative allowance may not be authorized based on an incomplete or incorrect certification. For the purpose of payment of an administrative allowance, supplemental information or a corrected report will be considered to be for the same month as the original certification.

(c) Payment will be made only upon presentation by the school of a properly prepared voucher accompanied by the certification of training. Payment may, however, be authorized when the voucher is received subsequent to receipt of the training certificate where the failure to submit the voucher and certificate simultaneously was due to either a clerical error or a previous understanding between the station head and the school that isolated certificates need not be accompanied by vouchers. (38 U.S.C. 1765).

CROSS REFERENCE: Special restorative training. See § 21.3302.

§ 21.3207 Failure to meet approval requirements.

When the Veterans Administration discovers facts which appear to warrant a finding that the school is in violation of specific criteria of 38 U.S.C. ch. 35, including failure to meet requirements for approval of a course offered to an eligible person, the facts will be referred to the field station Committee on Educational Allowances.

(a) The Committee on Educational Allowances in the field station is authorized to make recommendations on action to be taken for the purposes of this section, subject to approval by the station head. The Committee will include one member designated by the State approving agency, or in the absence of such designation, a staff employee designated

by the station head. The recommendation of the Committee, when approved by the station head, becomes the final administrative decision of the Veterans Administration unless an application for review is filed as provided in paragraph (d) of this section.

(b) A hearing may be held at the request of the school. No expenses incurred for counsel or witnesses will be paid by the Veterans Administration.

(c) If the station head does not approve the recommendation of the Committee on Educational Allowances, the decision will be made by Central Office.

(d) The school may file an application for review by Central Office of any decision rendered under paragraph (a) of this section. The application must be received in Central Office within 30 days after the date of notice of the decision. See § 21.3208.

(e) The decision of the station head will be effective as of the date of the decision. A decision rendered under § 21.3208 affirming disapproval of the course will be effective the date of receipt of the decision in the field station. A decision which reverses the field station's disapproval of the course will be effective as of the date of the original decision.

§ 21.3208 Central Office Education and Training Review Panel.

(a) *Purpose.* The panel will receive evidence and hear the testimony of witnesses and the arguments of interested parties regarding matters considered by the field station Committee on Educational Allowances and to make recommendations to the Director, Compensation, Pension, and Education Service, in connection with such matters which are before him for final administrative determination under § 21.3202 or § 21.3207.

(b) *Composition of panel.* The panel will consist of one staff employee from the office of the Director of Compensation, Pension, and Education Service, and two persons who are not employees of the Veterans Administration chosen from a group of consultants selected for that purpose.

(c) *Disposition of matters reviewed by the panel.* The concurrence of the Director with the recommendation of the panel will constitute the final administrative decision of the Veterans Administration. If the Director does not concur with the recommendation of the panel, the final decision will be made by the Chief Benefits Director.

§ 21.3209 Examination of records.

(a) The records and accounts of educational institutions pertaining to eligible persons enrolled in programs of education or special restorative training under 38 U.S.C. ch. 35 will be available for examination by duly authorized representatives of the Government.

(b) Each school will upon request of duly authorized representatives of the Government make available for examination all appropriate records and accounts, including but not limited to:

(1) Records and accounts which are evidence of tuition and fees charged to and received from or on behalf of all eligible persons and from other students similarly circumstanced.

(2) Records of previous education or training of eligible persons at the time of admission as students and records of advance credit, if any, granted by the school at the time of admission, and

(3) Records of the eligible person's grades and progress.

(c) The school having eligible persons enrolled in a course or courses which do not lead to a standard college degree will make available, in addition to the records and accounts required in paragraph (b) of this section, the records of leave, absences, class cuts, makeup work, and tardiness.

(d) The school having eligible persons enrolled in nonaccredited courses will make available, in addition to the records and accounts required in paragraphs (b) and (c) of this section, the following:

(1) Records of interruptions for unsatisfactory conduct or attendance.

(2) Records of refunds of tuition, fees and other charges made to an eligible person who fails to enter the course or withdraws or is discontinued prior to completion of the course.

(e) Failure to make such records available as provided in this section will be grounds for discontinuing the payment of educational assistance or special training allowances under the law.

(f) The records and accounts, as described in this section, pertaining to each period of enrollment of an eligible person, shall be kept intact and in good condition at the school for at least 3 years following the termination of such enrollment period. Longer retention will not be required unless a written request is received from the General Accounting Office or the Veterans Administration not later than 30 days prior to the end of the 3-year period.

PROGRAMS OF EDUCATION

§ 21.3230 Requirements.

When an application for educational assistance is approved provisionally, the eligible person and, if a minor, the parent or guardian also will be informed of the need to develop a program of education. This program will consist of a combination of subjects or unit courses generally acceptable to meet requirements for a predetermined educational, professional or vocational objective.

(a) An educational objective will be one that leads to the awarding of a diploma, degree, or certificate which indicates educational attainment.

(b) A professional or vocational objective will be one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

§ 21.3231 Educational plan.

(a) During or subsequent to counseling the eligible person (with concurrence of the parent or guardian, if a minor, and with the assistance of the counselor, if desired), will prepare an educational plan on a prescribed form which will be signed and treated as an integral part of the application. The educational plan shall show the objective and program selected, the institution(s) where the program will be pursued and the estimated cost for tuition and fees.

(b) Final approval of the educational plan will be given when it is determined that:

(1) The eligible person is not already qualified for the objective for which the plan is prepared.

(2) The educational plan is consistent with Veterans Administration regulations on providing a program of education and does not include any courses which are precluded under 38 U.S.C. ch. 35.

§ 21.3232 Specialized vocational training.

(a) A program consisting of a specialized course of vocational training may be provided to an eligible person who has passed his 14th birthday, who is not in need of special restorative training and who requires such a program because of a mental or physical handicap. The Vocational Rehabilitation Board will determine whether such a course is in the best interest of the eligible person. If the determination is in the affirmative the Board will assist in developing the program and a suitable educational plan. If it is determined that such a program is not in the best interest of the eligible person the application for the program will be denied.

(b) The objective of a program of specialized vocational training will be designated as a vocational objective.

(c) When needed, special assistance will be provided under § 21.3276.

§ 21.3233 Combination.

An approved program may consist of a combination of courses with instruction offered by a school alternating with instruction in a business or industrial establishment (a cooperative course); courses offered by two schools concurrently; or courses offered through class attendance and by television concurrently.

(a) *Cooperative courses.* A full-time program of education consisting of phases of school instruction alternated with training in a business or industrial establishment with such training being strictly supplemental to the school instruction may be approved. For purposes of approval the school offering the course must submit to the State approving agency with its application statements of fact showing at least the following:

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment;

(2) That the course is set up as a co-operative course in the school catalog or other literature of the school;

(3) That the school itself arranges with the employer's establishment for providing the alternate on-job periods of training on such basis that the on-job portion of the course will be training in a real and substantial sense and will supplement the in-school portion of the course;

(4) That the school arranges directly with the employer's establishment for placing the individual student in that establishment and exercises supervision and control over the student's activities at the establishment to an extent that assures training in a true sense to the student; and

(5) That the school grants credit for the on-job portion of the course for completion of a part of the work required for granting a degree or diploma (38 U.S.C. 1732(b)).

(b) *Concurrent enrollment.* Where an eligible person cannot successfully schedule his complete program at one school, a program of concurrent enrollment may be approved. When requesting such a program, the eligible person must show that his complete program of education or training is not available at the school in which he will pursue the major portion of his program (the primary institution), or that it cannot be scheduled successfully within the period in which he plans to complete his program.

(1) Where the standards for measurement of the courses pursued concurrently in the two institutions are different, the extent of the course will be determined by converting the measurement of training in the second institution to its equivalent in value to the measurement required for full-time training in the primary institution; e.g., institutional training on a clock-hour basis converted to its equivalent in value to semester-hours of credit will be 0.56 semester credits (14÷25) or 0.46 semester credits (14÷30), as applicable, for each clock-hour of attendance.

(2) Periodic certifications of training will be required from the veteran and each of the institutions where concurrent enrollment is approved.

(c) *Television.*—(1) *Open circuit telecast.* An undergraduate program may be pursued in part by open circuit telecast when—

(i) The eligible person is enrolled as a resident student in a program leading to a standard college degree.

(ii) The subjects taken by television are integral parts of his degree program.

(iii) A major portion of the credit hours for which the eligible person is enrolled during any semester or quarter is offered through conventional classroom and/or laboratory sessions. In no instance may an eligible person include in his program during any one semester or quarter more than 6 credit hours of open circuit telecast instruction for the purpose of computing the rate of educational allowance. Under these circumstances, an eligible person may pursue 8

or more credit hours during any one term through regular classroom and/or laboratory instruction and 6 credit hours by open circuit telecast for a full-time resident training load.

(2) *Closed circuit telecast.* Instruction offered through closed circuit telecast which requires regular classroom attendance is to be recognized to the same extent as regular classroom and/or laboratory instruction.

§ 21.3234 Change of program.

A request for a change of program will be made by an eligible person with concurrence of his parent or guardian, on a prescribed form. Not more than two changes of program may be approved.

(a) A change of program consists of a change in the educational, professional or vocational objective for which the eligible person entered training and a like change in the type of courses required to attain a new objective.

(b) One change of program will be approved, and a second change may be approved, if it is found that:

(1) The program of education which the eligible person proposes to pursue is suitable to his aptitudes, interests, and abilities; and

(2) In any instance where the eligible person has interrupted, or failed to progress in, his program due to his own misconduct, his own neglect, or his own lack of application, there exists a reasonable likelihood with respect to the program which the eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress.

(c) A change in courses or places of training will not be considered a change of objective in the following instances:

(1) The pursuit of the first program is a prerequisite for entrance into and pursuit of a second program.

(2) A transfer from one school to another when

(i) The program at the second school leads to the same educational, professional or vocational objective, and

(ii) Does not involve a material loss of credit, or increase training time.

(3) Revision of a program which does not involve a change of objective or material loss of credit nor loss of time originally planned for completion of the eligible person's program. For example, an eligible person enrolled for a Bachelor of Science degree may show a professional objective such as chemist, teacher or engineer. His objective for purposes of this paragraph shall be considered to be "bachelor degree" and any change of courses will be considered only an adjustment in the program, not a change, so long as the subjects he pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree.

(d) When as a result of further counseling a change of program is recommended such change will be approved if the educational plan submitted meets the criteria applicable to final approval of an original application. (See §§ 21.3230 and 21.3231.)

COURSES

§ 21.3250 Approval of courses.

(a) *General.* A course of education offered by a school must be approved by the State approving agency for the State in which the school is located, or, where appropriate, by the Veterans Administration. (38 U.S.C. 1772(a).)

(b) *State approving agencies.* Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. ch. 35 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) *Notice of approval.* Each State approving agency will furnish to the Veterans Administration a current list of schools specifying courses which it has approved, and will furnish such other information as it and the Veterans Administration may determine to be necessary. See § 21.3256.

(2) *Notice of disapproval.* Each State approving agency will notify the Veterans Administration of the disapproval of any course previously approved and will set forth the reasons for such disapproval. See § 21.3257. (38 U.S.C. 1772(a).)

(3) *Failure to act.* If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Veterans Administration.

(c) *Veterans Administration approval.* The Director, Compensation, Pension and Education Service may approve:

(1) Special restorative training in excess of 9 months, to overcome or lessen the effects of a physical or mental disability so as to enable an eligible person to pursue a program of education;

(2) A course of education offered by any agency of the Federal Government authorized under other laws to offer such course;

(3) A course of education offered by a school located in the Panama Canal Zone, Guam and Samoa; and

(4) Any course in any other school in accordance with the provisions of 38 U.S.C. ch. 35. (38 U.S.C. 1772(b).)

§ 21.3251 Period of operation of course.

(a) *General.* A course offered by a school will be appropriate for the enrollment of an eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(1) Any course to be pursued in a public or other tax-supported educational institution;

(2) Any course which is similar in character to instruction previously offered by the school for more than 2 years;

(3) Any course which has been offered by a school for a period of more than 2 years, notwithstanding that the school has moved to another location within the same general locality; or

(4) Any course which is offered by a nonprofit school of college level and which is recognized for credit toward a standard college degree. (38 U.S.C. 1725.)

(b) *Operation for 2 years.* A course is considered to have been in operation for 2 years when it has been given continuously for 24 calendar months inclusive of reasonable vacation and holiday periods. Where courses are only offered on an ordinary school-year basis (approximately 9 months), 2 ordinary school years in the 24 calendar months will constitute a 2-year period. Where short courses of less than an ordinary school year are offered on a regular cycle each calendar year, two cycles of such operation will constitute the 2-year period.

(c) *Course similar in character.* A course will be considered similar in character if it provides training for the same general objective, and involves the same or related instructional processes, tools, and materials as a course previously furnished by the school for a period of at least 2 years. When the State approving agency approves a new course which has not been in operation for a period of at least 2 years, as similar in character to a course which has been in operation for at least 2 years, the State will furnish the Veterans Administration with a copy of the approval and the basis for its view as to the similarity in character.

(d) *Move to new location.* A school will be considered to have moved to another location in the same general locality when the new location is within normal commuting distance of the original location. The school will not be subject to the 2-year limitation if it remains essentially the same as to faculty and student body and offers the same courses.

(e) *Change of ownership or management.* Where a school changes ownership or management, and remains essentially the same as to faculty, student body and courses offered, the school will not be subject to the 2-year limitation.

(f) *Subsidiary branch or extension.* The 2-year period of operation requirement will apply to courses offered by a subsidiary branch or extension of a school. Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the 2-year limitation if all of the following conditions are met:

(1) The school has been in operation for a period of 2 years or more;

(2) The school has reached the limit of its enrollment capacity in its present facilities;

(3) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(4) The additional facilities are within normal commuting distance of the present facilities.

§ 21.3252 Courses precluded.

(a) *Bartending, dancing and personality development.* Enrollment will not be approved in any bartending, dancing, or personality development course, except, where dancing is included in a physical education course in an institution of higher learning.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character. The courses identified in subparagraphs (1), (2), and (3) of this paragraph, are under the statutory presumption of being avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or course in sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Veterans Administration determines to be avocational or recreational. (38 U.S.C. 1723(a).)

(4) To overcome the presumption that a course is avocational or recreational in character, the eligible person will be required to establish that the course will be of bona fide use in the pursuit of his present or contemplated business or occupation.

(c) *Flight training.* No course of flight training will be approved except one given by an institution of higher learning for credit toward the standard collegiate degree for which the eligible person is enrolled. (38 U.S.C. 1723(b).)

(d) *Apprenticeship, or other training on the job, on-farm, correspondence courses and courses by radio.* Such courses will not be approved.

(e) *Courses in foreign countries.* Enrollment may not be approved in a course at a school not located in a State or in the Republic of the Philippines, unless all of the following conditions are met:

(1) The subjects to be taken at the foreign school are an integral part of and fully creditable toward the satisfactory completion of an approved course in which the eligible person is enrolled in an institution of higher learning (hereafter in this sentence referred to as his principal institution) which is located in a State or in the Republic of the Philippines;

(2) The tuition and fees for attendance at such foreign school are paid for by the principal institution; and

(3) The principal institution agrees to assume the responsibility for submitting to the Veterans Administration required enrollment certificates and monthly certifications of training as to attendance, conduct, and progress. An application for a program of education or for a change of program which includes training in a foreign school will not be given final approval until the applicant has been provided educational and vocational counseling by a Veterans Administration counseling service in a State or the Republic of the Philippines. (38 U.S.C. 1723(c).)

(f) *Courses on secondary level.* (1) A curriculum offered by a public or pri-

vate school at the secondary level leading to the completion of the eligible person's regular secondary school education, that is, leading to a high school diploma or its equivalent, may not be pursued as a program of education or as a part of a course of education.

(2) Where the eligible person has ended his secondary school education, by completion or otherwise, after having passed the age of compulsory school attendance, he may pursue a specialized vocational program of education in a school at the secondary level if such program leads to a bona fide vocational objective. Such a program may be pursued if it is deemed adequate to prepare graduates to enter directly into employment in the occupation or vocation which the eligible person expects to enter.

(3) Enrollment in a specialized vocational program will not be approved where the program, although containing essential elements of vocational instruction, includes a heavy weighting of subjects of secondary level thereby requiring for completion a total number of instructional hours approximately equal to that required for high school graduation. (38 U.S.C. 1723(d).)

§ 21.3253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements:

(1) The course is above secondary level and has been accredited and approved by a nationally recognized accrediting agency or association.

(2) The course is conducted under 20 U.S.C. 11-23 (vocational education) and is not pursued as a part of a regular secondary school.

(3) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree. (38 U.S.C. 1775.)

(b) *Course objective.* Any curriculum offered by a college or university which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of the curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum.

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Commissioner of Education as required by 38 U.S.C. 1775(a). The State approving agencies may utilize the accreditation of such accrediting agencies or associations for approval of the courses specifically accredited and approved by such agency or association.

(d) *School qualification.* A school desiring to enroll eligible persons in accredited courses will make application for approval of such courses to the State approving agency and will submit copies of its catalog or bulletin, together with such other information as will make it

possible for the State approving agency to determine whether:

(1) Adequate records are kept by the school to show the progress of each eligible person; and

(2) The school maintains a written record of the previous education and training of the eligible person and clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately, and the person and the Veterans Administration so notified. (38 U.S.C. 1775(b).)

(e) *College level.* Under the provisions of paragraph (a) (1) of this section, any course at college level approved by the State approving agency as an accredited course will be accepted by the Veterans Administration as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized accrediting agency listed by the Commissioner of Education; and

(2) The course has entrance requirements of not less than the requirements applicable to the college level program of the school; and

(3) Credit for the course is awarded in terms of standard semester or quarter hours.

(f) *Business schools.* Any 1- or 2-year business course in a business school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The school offering such business course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field of business as distinguished from other fields (this excludes courses such as radio and television service or repair, medical laboratory or X-ray, etc.); and

(3) The course leads to a vocational objective in the field of business; and

(4) The course is offered in residence at the school.

§ 21.3254 Nonaccredited courses.

(a) *General.* Nonaccredited courses are course which are not approved as accredited courses and which are offered by a public or private, profit or nonprofit, educational institution. These include nonaccredited courses offered by extension centers or divisions, or vocational or adult education departments of institutions of higher learning.

(b) *Application.* Any school desiring to enroll eligible persons in nonaccredited courses will submit a written application to the appropriate State approving agency for approval of such courses (38 U.S.C. 1776(a)). Such application will be accompanied by not less than two copies of the current catalog or bulletin which is certified as true and correct in content and policy by an authorized owner or official of the school and will include the following:

(1) Identifying data, such as volume number, and date of publication;

(2) Names of the school and its governing body, officials, and faculty;

(3) A calendar of the school showing legal holidays, beginning and ending date of each quarter, term, or semester, and other important dates;

(4) School policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

(5) School policy and regulations relative to leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(6) School policy and regulations relative to standards of progress required of the student. This policy will define the grading system of the school, the minimum grades considered satisfactory conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any, allowed by the school, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the school and furnished the student;

(7) School policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

(8) Detailed schedule of fees, charges for tuition, books, supplies, tools, students activities, laboratory fees, service charges, rentals, deposits, and all other charges;

(9) Policy and regulations relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course, or withdraws, or is discontinued therefrom;

(10) A description of the available space, facilities and equipment;

(11) A course outline for each course for which approval is requested, showing subjects or units in the course, type of work or skill to be learned, and approximate time and clock-hours to be spent on each subject or unit; and

(12) Policy and regulations relative to granting credit for previous education and training. (38 U.S.C. 1776(b).)

(c) *Approval criteria.* The appropriate State approving agency may approve the application of such school when the school and its nonaccredited courses are found upon investigation to have met the following criteria:

(1) The courses, curriculum, and instruction are consistent in quality, content, and length with similar recognized accepted standards;

(2) There is in the school adequate space, equipment, instructional material, and instructor personnel to provide training of good quality;

(3) Educational and experience qualifications of directors, administrators, and instructors are adequate;

(4) The school maintains a written record of the previous education and training of the eligible person and clearly indicates that appropriate credit has been given for previous education and training, with the training period shortened proportionately, and the eligible person and the Veterans Administration so notified;

(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations pertaining to ab-

sences, grading policy, and rules of operation and conduct will be furnished the eligible person upon enrollment;

(6) Upon completion of training, the eligible person is given a certificate by the school indicating the approved course and indicating that training was satisfactorily completed;

(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced;

(8) The school complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building and sanitation codes. The State approving agency may require such evidence of compliance as is deemed necessary;

(9) The school is financially sound and capable of fulfilling its commitments for training;

(10) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The school will not be deemed to have met this requirement until the State approving agency:

(i) Has ascertained from the Federal Trade Commission whether the Commission has issued an order to the school to cease and desist from any act or practice, and

(ii) Has, if such an order has been issued, given due weight to that fact.

(11) The school does not exceed its enrollment limitations as established by the State approving agency;

(12) The school's administrators, directors, owners, and instructors are of good reputation and character;

(13) The school has and maintains a policy for the refund of the unused portion of tuition, fees, and other charges in the event the eligible person fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion. Such policy must provide that the amount charged to the eligible person for tuition, fees, and other charges for a portion of the course shall not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to its total length; See § 21.3255.

(14) Such additional criteria as may be deemed necessary by the State approving agency. (38 U.S.C. 1776(c).)

§ 21.3255 Refund policy; nonaccredited courses.

A refund policy will meet the requirements of § 21.3254(c) (13), if it provides that the amount charged for tuition, fees, and other charges for a portion of the course does not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to the total length when the school makes provision for refund within the following limitations:

(a) *Registration fee.* An established registration fee in an amount not to exceed \$10 need not be subject to pro-rata. Where the established regis-

tration fee is more than \$10, the amount in excess of \$10 will be subject to proration.

(b) *Breakage fee.* Where the school has a breakage fee, it may provide for the retention of only the exact amount of the breakage, with the remaining part, if any, to be refunded.

(c) *Consumable instructional supplies.* Where the school makes a separate charge for consumable instructional supplies, as distinguished from laboratory fees, the exact amount of the charges for supplies consumed may be retained but any remaining part must be refunded.

(d) *Books, supplies and equipment.* Where the eligible person purchases his books, supplies, and equipment from a bookstore or other source, and the cost of such items is separate and independent from the charge made by the school for tuition and fees, he may retain or dispose of such items at his own discretion. Where the school furnishes the books, supplies, and equipment, with the cost thereof included in the total charge payable to the school for the course, and the eligible person withdraws or is discontinued prior to the completion of the course, refund will be made in full for the amount of the charge for the unissued books, supplies, and equipment. Issued items may be disposed of at the discretion of the eligible person.

(e) *Tuition and other charges.* Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the eligible person than the approximate pro rata basis as provided in this section, such established policy will be applicable. Otherwise, the school will refund a sum which does not vary more than 10 percent from the exact pro rata portion of such tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. The exact proration will be determined on the ratio of the number of days of instruction completed by the eligible person to the total number of instructional days in the course.

§ 21.3256 Notice of approval.

(a) The State approving agency, upon determining that a school has complied with all the requirements for approval will notify the school by letter setting forth the courses which have been approved, and will furnish to the Veterans Administration an official copy of the letter and attachments and any subsequent amendments. The letter of approval for each school shall be accompanied by a copy of the catalog or bulletin of the school, as approved by the State approving agency, and will contain the following information:

- (1) Date of letter and effective date of approval of courses;
- (2) Proper address and name of each school;
- (3) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin published by the school;

- (4) Name of each course approved;
- (5) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;
- (6) Signature of responsible official of State approving agency; and
- (7) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency. (38 U.S.C. 1777.)

§ 21.3257 Disapproval.

(a) Any course which, after being approved, fails to meet any of the requirements for approval will be immediately disapproved by the appropriate State approving agency. Upon disapproval, the State approving agency will notify the school by certified or registered letter with a return receipt secured (38 U.S.C. 1778(a)). It is incumbent upon the State approving agency to determine the conduct of courses and to take immediate appropriate action in each case in which it is found that the conduct of a course in any manner fails to comply with the requirements for approval.

§ 21.3257 Disapproval.

(b) Each State approving agency will immediately notify the Veterans Administration of each course which it has disapproved.

(c) The Veterans Administration will disapprove courses under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See § 21.3150(c).

(d) The Veterans Administration will immediately notify the State approving agency in each case of Veterans Administration disapproval of any school under 38 U.S.C. ch. 31. (38 U.S.C. 1778(b).)

ASSESSMENT AND PURSUIT OF COURSE

§ 21.3270 Measurement of courses.

Clock hours mentioned in this table mean clock hours per week.

Courses		Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time
Kind of school	Kind of course			
(a) Trade or technical (includes college courses not leading to a standard degree).	Shop practice an integral part of course.	30 clock hours attendance with not more than 2½ hours rest period allowance.	22 to 30 clock hours attendance with not more than 2 hours rest period allowance.	16 to 22 clock hours attendance with not more than 1½ hours rest period allowance.
	Theory and class instruction predominates.	25 clock hours net instruction.	18 to 25 clock hours net instruction.	12 to 18 clock hours net instruction.
(b) College undergraduate.	Standard collegiate courses including cooperative. ¹	14 semester hours or equivalent.	10 to 14 semester hours or equivalent.	7 to 10 semester hours or equivalent.
(c) Collegiate graduate.	Standard collegiate graduate courses including law.	As in paragraph (b) of this section or certified by responsible official of school.	As in paragraph (b) of this section or certified by responsible official of school.	As in paragraph (b) of this section or certified by responsible official of school.
(d) Professional (non-accredited).	Law only. ²	12 class sessions per week.	9 to 12 class sessions per week.	6 to 9 class sessions per week.
(e) Professional (accredited and equivalent).	Internships and residencies: Medical, Dental, Osteopathic	As established by accrediting association (full time only).		
	Nursing, X-ray medical technology, medical records librarian, physical therapy.	25 clock hours or 14 semester hours, as appropriate.	18 to 25 clock hours or 10 to 14 semester hours, as appropriate.	12 to 18 clock hours or 7 to 10 semester hours, as appropriate.

¹ Cooperative course may be pursued on full-time basis only.

² Twelve class sessions per week will consist of at least 600 minutes; 9 class sessions will consist of at least 450 minutes and 6 class sessions will consist of at least 300 minutes. These required minutes pertain to net instruction, independent of supervised study, class breaks, or rest periods.

§ 21.3271 Trade or technical.

(a) *Shop practice predominates.* Trade or technical courses, which include shop practice as an integral part of the course, will be measured on a basis of clock-hours per week. This includes such courses under the supervision of a college or university where credit is not given towards a standard college degree.

(b) *Theoretical or classroom instruction predominates.* A technical course in which theoretical or classroom instruction constitutes more than 50 percent of the required hours per week, will be measured on a clock-hour basis. This includes such courses given by a college or university for which credit is not granted towards a standard college degree.

§ 21.3272 Collegiate undergraduate; credit-hour basis.

An undergraduate course in a collegiate institution will be measured on a credit-hour basis provided all the conditions under paragraph (a), (b), or (c) of this section are met:

(a) The course is offered by a college or university which is a member of a nationally recognized accrediting association, and

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course leads to an associate, baccalaureate, or higher degree which is granted by the school offering the course.

(b) The course is offered by a college or university which is not a member of

a nationally recognized accrediting association, and

(1) The course is offered on a semester- or quarter-hour basis, and,

(2) The course leads to an associate, baccalaureate, or higher degree, which is granted by the school offering the degree, and

(3) The president of the college or university will certify that three institutions identified by him as members of a nationally recognized accrediting association will recognize credit received on transfer at full value; i.e., credit hour for credit hour, and that at least 40 percent of the subjects within each curriculum, desired to be measured on a credit-hour basis, are acceptable in partial fulfillment of the requirements for a baccalaureate or higher degree. In lieu of such certification the school may furnish letters from three schools that are members of nationally recognized accrediting associations certifying that credits are received on transfer at full value, and that at least 40 percent of the subjects within each curriculum, desired to be measured on a credit-hour basis, are acceptable in partial fulfillment of the requirements for a baccalaureate or higher degree.

(c) The course is offered by either a member or nonmember of a nationally recognized accrediting association, and

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course does not lead to a degree, and

(3) The course requires not less than high school graduation or equivalent for admission, and

(4) A minimum of 2 full-time academic years is required for completion of the course, and

(5) If the institution, which offers the course, is a member of a nationally recognized accrediting association, certifies that credit for at least 40 percent of the subjects within the curriculum, desired to be measured on a credit-hour basis, is granted upon transfer to the element of the institution which offers a baccalaureate or higher degree, and credit is awarded at full value; i.e., credit hour for credit hour toward partial fulfillment of the requirements for a baccalaureate or higher degree, or

(6) If the institution offering the course is not a member of a nationally recognized accrediting association, it furnishes proper certification as provided in paragraph (b) of this section.

(d) Where the course is of less than a regular semester, term, or quarter duration, it will be measured as full, three-fourths, or one-half time according to the certification of the institution. In making such certification, the institution will state the number of credit hours for which the eligible person is registered including, the credit hour equivalent of noncredit courses, if any, required by the institution and will be required to observe the following criteria:

(1) Full time: The number of credit-hours for which the eligible person must be registered in order to be considered pursuing full-time training is that num-

ber which requires at least 14 standard class sessions of attendance per week or the equivalent in laboratory or fieldwork, research, or other types of prescribed activity. For example, an eligible person pursuing a short, summer session requiring attendance at 14 standard class sessions per week will be considered to be in full-time training, although because of the very short duration of the course he may be registered for only 3 credit-hours.

(2) Three-fourths time: Less than 14 class sessions of attendance per week or equivalent but not less than 10.

(3) One-half time: Less than 10 class sessions of attendance per week or equivalent but not less than 7.

(e) Where the course is acceptable for credit but credit may not be awarded to the eligible person because he has not met college entrance requirements or for some other valid reason, the course will be measured the same as if it were pursued for credit provided the eligible person performs all of the work prescribed for other students who are enrolled for credit.

(f) Where the institution requires the eligible person to pursue noncredit deficiency courses in order to meet certain scholastic or entrance requirements, the institution will certify the credit-hour equivalent of such noncredit deficiency courses in addition to the credit hours for which the eligible person is enrolled. The measurement criteria of § 21.3270 will be applied, with the following modifications:

(1) Full time: 12 hours credit plus the noncredit deficiency courses.

(2) Three-fourths time: Less than 12 hours credit but not less than 9 hours credit, plus the noncredit deficiency courses.

(3) One-half time: Less than 9 hours credit but not less than 6 hours credit in addition to the noncredit deficiency courses.

(g) Courses for which credit is not given toward a standard college degree will be evaluated on a clock-hour basis. See § 21.3271(b).

§ 21.3273 Collegiate graduate.

(a) *In residence.* An accredited graduate or advanced professional course pursued in residence at a collegiate institution will be assessed in accordance with § 21.3272 unless it is the established policy of the school to consider less than 14 semester hours or the equivalent as full-time enrollment, or the course includes research, thesis preparation, or a comparable prescribed activity beyond that normally required for the preparation of ordinary classroom assignments. In either case a responsible official of the school will certify that the eligible persons is pursuing the course full, three-fourths, or one-half time.

(b) *In absentia.* A responsible official of the school will certify a program of research pursued by an eligible person in absentia as full, three-fourths, or one-half time, and the activity will be assessed by the Veterans Administration accordingly when

(1) The research activity is defined and organized so as to enable the certifying official to evaluate the time required for its successful pursuit, and

(2) The time certified for the research activity is independent of the time devoted to any employment situation in which the eligible person might be engaged.

(c) *Undergraduate or combination.* Undergraduate courses required by the school will be assessed in terms of credit hours, even though the eligible person is enrolled as a graduate student. If the eligible person is taking both graduate and undergraduate courses, the school will give the credit-hour equivalent of the graduate work so that this equivalent may be combined with the undergraduate credits to determine the extent of training.

(d) *Law.* A law course pursued in an accredited law school for the LL.B. degree where, as is usual, the units of credit are of greater value than the standard units of credit for courses leading to undergraduate degrees in other schools will be assessed as in paragraph (a) of this section, except that an accredited 4-year night law course unless approved as a full-time course pursuant to the standards established by the American Bar Association will be considered part time and will be measured as not more than three-fourths time.

§ 21.3274 Professional; nonaccredited.

(a) A law course pursued in a non-accredited school will be assessed on a clock-hour basis, except that if the school requires for admission to the law course completion of college work consisting of not less than 90 standard semester units of credit or the equivalent in quarter units of credit, and requires for the awarding of the law degree that its students pursue a daytime course of not less than 3 years duration if they devote substantially all of their working time to their course of studies, or if pursued in the evening the school requires not less than 4 school years of attendance, the course will be assessed on the basis of sessions of attendance per week.

(b) In no case will a nonaccredited night law course be measured at more than three-fourths time.

§ 21.3275 Professional; accredited.

Medical, osteopathic, and dental internships and residencies will be recognized as full-time institutional courses when accredited and approved by the appropriate accrediting agency as leading to certification for a recognized professional objective.

(a) Medical internship courses will be accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association and for such length as the council has approved for the particular internship course at the particular hospital.

(b) Osteopathic internship courses will be accredited and approved by the American Osteopathic Association and for such length as the association has approved for each particular internship at the particular hospital.

(c) Dental internship courses will be accredited and approved by the Council on Dental Education of the American Dental Association as an integral part of an approved course leading to certification by a Dental Specialty Board recognized by the American Dental Association.

(d) No other medical, dental, or osteopathic internship courses will be recognized, since they are not recognized by the profession as qualifying a person for the practice of the profession.

(e) Medical residency courses will be recognized when accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association as standard residencies leading to a certification by a Specialty Board. For those residencies where there is no Specialty Board, there must be certification by a hospital approved by the Council on Medical Education and Hospitals of the American Medical Association. The length of a residency course is not to exceed the number of months prescribed for the residency training by the appropriate Specialty Board or by the Council on Medical Education and Hospitals of the American Medical Association.

(f) Osteopathic residency courses will be accredited and approved by the American Osteopathic Association for such length as the appropriate Specialty Board of the Association has approved for each particular residency course.

(g) Dental residency courses will be recognized when they are accredited and approved by the Council on Dental Education of the American Dental Association as standard residencies leading to certification by a Dental Specialty Board, and the length of the course is not in excess of the number of months prescribed for the residency training by the appropriate Specialty Board or the Council on Dental Education of the American Dental Association.

(h) No course of residency training will be approved to include a period of practice, following completion of a required residency, even though such practice is required or accepted by a Specialty Board to fulfill board requirements. Further, where an eligible person after completing an internship prerequisite to residency training has pursued any additional training, whether through internship, fellowship, or other graduate or postgraduate study that is creditable toward residency requirements, the residency course must be proportionately shortened.

(i) No other medical, dental, or osteopathic residency course will be recognized since they are not recognized by the accrediting agency.

(j) Registered nursing and registered professional nursing courses (accredited or accepted as equivalent).

(1) Courses for the objective of registered nurse or registered professional nurse will be assessed as institutional training when they are provided in autonomous schools of nursing, hospital schools of nursing, or schools of nursing established in other schools or departments of colleges and universities, if they

are accredited courses pursued in a school accredited by a nationally recognized accrediting agency. A nonaccredited course will be considered appropriate if it meets the requirements of the licensing body of the State in which the school is located.

(2) The hospital or fieldwork phase of a course leading to a degree of Bachelor of Science in nursing, or a comparable degree, will be assessed as an institutional course when the hospital or fieldwork phase is an integral part of the course, the completion thereof is a prerequisite to the granting of the degree, the student remains enrolled in the school during the entire period, and the training is under the direction and supervision of the school. Where measurement of the hospital training segment on a credit-hour basis would not reflect the full-time status of the student, enrollment certifications submitted by the school should include appropriate entries to show clock hours in lieu of credit hours during the hospital training periods.

(3) An eligible person may not enroll in any other course for the objective of registered or registered professional nurse.

(k) Practical nursing courses (accredited or accepted as equivalent).

(1) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be assessed as institutional training including both the academic subjects and the clinical training if the clinical training is offered in an affiliated or cooperating hospital and the student is enrolled in and supervised by the school during the period of such clinical training. For the academic portion of the course, measurement will be semester-hours of credit or clock-hours of required attendance per week, whichever is appropriate. The clinical training will be measured in clock-hours of required attendance per week.

(2) Enrollment in courses for the objective of nurse's aide will not be authorized.

(l) X-ray technician, medical technician, medical records librarian, and physical therapist courses will be assessed as follows:

(1) Where such courses are offered in hospitals and the courses are accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association, they will be considered full-time institutional training.

(2) Where such courses are offered in hospitals, clinics, or laboratories and are not accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association, they will be considered on-job training and not permitted under chapter 35.

(3) Where such courses are offered by a school they will be measured in semester-hours of credit or clock-hours of required attendance per week, whichever is appropriate.

§ 21.3276 Special assistance.

(a) The assistance of a vocational rehabilitation specialist or of a counselor

with assigned vocational rehabilitation specialist duties will be provided in connection with a program of education when it is determined by the Vocational Rehabilitation Board that, although the eligible person is not in need of special restorative training, he will require assistance in order to pursue a program of education successfully because of the handicapping effects of a physical or mental condition, or because of personal adjustment problems.

(b) The determination as to need for such assistance will be made by the Vocational Rehabilitation Board upon the basis of information developed in the counseling process, including data and opinions obtained from medical and other specialists as appropriate in the case.

(1) A determination that an eligible person needs such assistance will be made when one or more of the following conditions is found to exist:

(i) The handicapping effects of a physical or mental condition are such that assistance will be required in order for the eligible person to enter and successfully pursue a program of education;

(ii) The eligible person has a history of a behavioral pattern which if continued would interfere with or impede his entrance into and pursuit of a program of education;

(2) The Vocational Rehabilitation Board will prepare a report as to the need for assistance and the factors taken into account in arriving at the determination. Where an affirmative determination of need is found, the board will include suggestions and recommendations relative to the nature of the assistance contemplated.

(c) When it is determined by the Vocational Rehabilitation Board that an eligible person needs assistance, the parent or guardian will be informed of the finding and of the underlying reasons. If the parent or guardian concurs in the finding, the assistance will be provided as is indicated until the progress and adjustment of the eligible person in his program of education are such that the assistance is no longer needed.

(d) Assistance by the vocational rehabilitation specialist will include:

(1) Assisting the eligible person and the school in the implementation of the planned program of education;

(2) Determining the progress of the eligible person through visits at the school as well as through review of records and, when indicated, taking action designed to solve problems which may interfere with satisfactory pursuit of the program of education;

(3) Making referral when indicated and coordinating action with responsible individuals and agencies in order to alleviate or prevent conditions arising which may negatively affect progress;

(4) Referring the case of an eligible person who is receiving assistance to the Vocational Rehabilitation Board when one of the following conditions exists:

(i) Need for special restorative training appears to be for consideration;

(ii) The advice and assistance of the board is needed to resolve difficulties;

(5) Assisting the parent or guardian in locating and arranging for the services of suitable instructors and equipment when the eligible person is homebound.

§ 21.3277 Discontinuance; unsatisfactory progress.

(a) *Satisfactory pursuit of training.* Entitlement to a program of education is subject to the requirement that the eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress and conduct in accordance with the regularly prescribed standards and practices of the institution in which he is enrolled.

(b) *Maintenance of satisfactory conduct and progress.* A program of education will be discontinued where it is established that by reason of the eligible person's unsatisfactory conduct or progress he will no longer be retained as a student or would not be readmitted as a student by the school in which he is or was enrolled, unless it is found through further development that the action of the school is of a retaliatory nature. (38 U.S.C. 1724.)

§ 21.3278 Reentrance after discontinuance.

(a) An eligible person may be reentered into training following discontinuance because of unsatisfactory conduct or progress only when the following conditions exist:

(1) The cause of the unsatisfactory conduct or progress has been removed, and

(2) It is determined through further counseling that the program which the eligible person now proposes to pursue is suitable to his aptitudes, interests and abilities.

(b) Reentrance may be for the same program, for a revised program or for an entirely different program depending on the cause of the discontinuance, the removal of that cause, and the determinations arrived at through further counseling. (38 U.S.C. 1724.)

SPECIAL RESTORATIVE TRAINING

§ 21.3300 Special restorative training.

(a) Special restorative training may be prescribed where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible person to pursue a program of education. Medical care and treatment or psychiatric treatment are not included.

(b) The Vocational Rehabilitation Board may prescribe for special restorative training purposes such courses as speech and voice correction or retention, language retraining, speech (lip) reading, auditory training, Braille reading and writing, training in ambulation, one-hand typewriting, nondominant hand-writing, personal, social and work adjustment training, remedial reading, and such other training deemed necessary.

(c) Special restorative training may be provided in excess of 36 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 36 months, may be expended through an

accelerated program requiring a rate of payment in excess of \$41 per calendar month. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b) and note.)

(d) Special restorative training will not be provided in Veterans Administration facilities.

§ 21.3301 Need.

(a) When the case of a handicapped person is referred to the Vocational Rehabilitation Board, because of a request by a parent or guardian or upon recommendation of a counselor, the board will determine whether:

(1) There exists a handicap which will interfere with pursuit of a program of education;

(2) It is in the best interests of an eligible person to begin special restorative training after having reached his 14th birthday;

(3) Upon completion of special restorative training the eligible person should be able to pursue a program of education;

(4) The special restorative training may be pursued concurrently with a program of education; and

(5) Training is medically feasible.

(b) Where the board decides that special restorative training is needed, the Vocational Counseling, Training and Adjustment Section will develop and implement a training course suited to the needs and capacities of the eligible person.

(c) Where a parent or guardian has requested special restorative training on behalf of an eligible person and the board finds that such training is not needed or is not medically feasible, the parent or guardian will be informed of the action taken.

(d) When the case of an eligible person is referred for consideration of reentrance into special restorative training following an interruption, the board will recommend approval if it is found that training is medically feasible and there is reasonable expectation that the purpose of special restorative training may be accomplished. See § 21.3306.

§ 21.3302 Agreements.

(a) Agreements may be made with public or private educational institutions or others to provide special restorative training for an eligible person as may be suitable and necessary.

(b) Where a customary tuition charge is not applicable the agreement will include the fair and reasonable amounts which may be charged the parent or guardian for the training provided an eligible person.

(c) Each agreement will contain the same type of information as required for special restorative training for disabled veterans under 38 U.S.C. ch. 31, including the requirement that educational institutions, or others with whom arrangements have been made, report to the Veterans Administration promptly the enrollment, interruption or termination of the eligible person's course of special restorative training.

(d) An educational institution will be paid \$1, upon claim by the institution, for any month in which it submits one

or more of the above reports required by the Veterans Administration under the terms of the agreement.

§ 21.3303 Extent of training.

Ordinarily special restorative training may not exceed 9 months. However, where it is determined that more than 9 months is necessary the program will be referred to Central Office for prior approval. Where the plan for a program of special restorative training of itself (not in combination with the program of education) will require more than 36 months (or its equivalent in accelerated payments), the plan will be included in the recommendation to Central Office for approval. The limitation at age 31 may not be exceeded. A course of special restorative training will be prescribed on a full-time basis as determined in each individual case in accordance with one of the following requirements:

(a) The course will require devotion of that amount of time per week which is commonly devoted to a full-time course at an educational institution in each case where, based on medical findings, it is determined that the physical or mental condition of the eligible person will permit the devotion of that amount of time to his training.

(b) The course will require devotion of the maximum amount of time per week which is determined by medical findings to be commensurate with the limitations imposed by the eligible person's disability in each case where medical authority determined that, due to such limitations, the time he should devote to his course is less than the amount of time indicated in paragraph (a) of this section.

(c) If the hours that can reasonably be devoted to the elements of needed restorative training per week will not of themselves equal the amount of time required by paragraph (a) or (b) of this section, the course will be supplemented with subject matter which will contribute toward the ultimate objective of a program of education.

§ 21.3304 Assistance during training.

(a) In all cases of special restorative training, there will be close supervision to assure satisfactory progress, and, when needed, proper and timely adjustments. In the process of supervision two factors in particular must be kept in mind:

(1) Unless the course is properly provided both in kind and amount the eligible person's chances for ultimate successful completion of a program of education are jeopardized.

(2) Because all time spent in a course of special restorative training is subtracted from the time the law allows for a program of education, there must not be any waste of time or prolonging of the course of special restorative training beyond that necessary to accomplish the purpose of such training.

(b) Supervision will as a minimum consist of the following:

(1) Knowledge as to the progress of the eligible person at all times.

(2) The assisting of the eligible person and his instructor in all matters affecting training.

(3) A continuing alertness to discover any new developments which may affect progress and the exertion of every effort to forestall or remove any disadvantageous factors.

(4) The maintaining of adequate records of the progress of the eligible person. This will include records of the eligible person's attendance, personal conduct, and application to the course.

(c) When in the process of supervision it is determined that adjustments are needed in the course or in the training situation immediate action will be taken to bring about such adjustments in accordance with the following:

(1) When the eligible person or his instructor indicates dissatisfaction with elements of the program, through personal discussion with the eligible person and/or his instructor, there will be effected if possible a correction of the difficulty through such means as making minor adjustments in the course or by persuading the eligible person to give more attention to performance.

(2) When it develops that there are difficulties of major significance which cannot be corrected a report of all pertinent facts together with recommendations will be prepared and submitted to the Vocational Rehabilitation Board for proper action.

(3) When in process of supervision it is determined that the eligible person is making progress much faster than was anticipated and it is clear that his course may be terminated with satisfactory results short of the time originally planned, action will be taken to terminate the course at the proper time so that the eligible person's entitlement to an educational program may be conserved.

(d) As long as the eligible person is making satisfactory progress toward the established objective of overcoming the effect of his handicap, the eligible person will be continued in his course of training without accounting for days of nonattendance within his authorized enrollment. However, in any instance where the eligible person's progress toward his objective is unsatisfactory or because of his negligence, lack of application or misconduct, his progress is being materially retarded his course of instruction will be interrupted.

§ 21.3305 Status "interrupted".

(a) An eligible person once entered into special restorative training should pursue his course to completion without interruption. Wherever possible, continuous training shall be provided for each such eligible person, including training during the summer, except where, because of his physical condition or other good reason, it would not be to his best interest to pursue training during the summer.

(b) Special restorative training will be interrupted as necessary under the following conditions:

(1) During summer vacations or periods when no instruction is given before and after summer sessions.

(2) During a prolonged period of illness or medical infeasibility.

(3) When the eligible person voluntarily abandons special restorative training.

(4) When the eligible person fails to make satisfactory progress in the special restorative training course.

(5) When the eligible person is found to be no longer acceptable to the institution because of failure to maintain satisfactory conduct or progress in accordance with the rules of the institution.

§ 21.3306 Reentrance after interruption.

When a course of special restorative training has been interrupted and the eligible person presents himself for reentrance, action will be taken as follows:

(a) Where special restorative training was interrupted for a scheduled vacation period, for a short period of illness or for other reason which does not prevent reentrance in the same course of special restorative training without corrective action, reentrance will be approved.

(b) Where special restorative training was interrupted by reason of failure to maintain satisfactory conduct or progress or for any other reason which requires corrective action, such as change of place of training, change of course, personal adjustment, etc., the case will be referred to the Vocational Rehabilitation Board for action.

(1) If it is determined that the conditions for which interruption action was taken can be overcome, the board will recommend the means by which adjustment in the case is to be made.

(2) If all efforts by the board to bring about proper adjustment in the case meet with failure and the board determines that adjustment cannot be made, the board will notify the Vocational Counseling, Training and Adjustment Section that reentrance is denied and that discontinuance action is to be taken. Such discontinuance will preclude any further pursuit of special restorative training under 38 U.S.C. ch. 35; therefore, action to discontinue should be taken only as a last resort and after all facts lead to the conclusion that there is no warrant to continue special restorative training. In any case of discontinuance the guardian or legal custodian will be notified in writing of the action taken. He will also be informed of potential rights to a program of education.

PAYMENTS; SPECIAL RESTORATIVE TRAINING

§ 21.3330 Payments.

(a) Payments will be made to the person designated to receive the payments under the provisions of § 21.3138.

(b) The special training allowance will be paid only for the period of the eligible person's approved enrollment as certified by the vocational rehabilitation specialist. In no event, however, will such allowance be paid for any period during which:

(1) The eligible person is not pursuing the prescribed course of special restorative training that has been determined to be full-time training with respect to his capacities.

(2) An educational assistance allowance is made.

(c) The following sections governing the payment of educational assistance allowance apply to the payment of special restorative training allowance:

- (1) Section 21.3139, *Apportionment*;
- (2) Section 21.3140, *Offsets*; *pension, compensation, and dependency and indemnity compensation*.

§ 21.3331 Commencing dates.

The commencing date of an authorization of a special training allowance will be the date of entrance or reentrance into the prescribed course of special restorative training, or the date the Vocational Rehabilitation Board approved such course for the eligible person, whichever is later. See also § 21.3131.

§ 21.3332 Discontinuance dates.

Special training allowance will be discontinued as provided in this section on:

(a) The ending date of the course, the ending date of the period of enrollment as certified by the vocational rehabilitation specialist, the ending date of the period of eligibility, or the expiration of the eligible person's entitlement, whichever occurs first.

(b) Date of interruption of course as determined by the vocational rehabilitation specialist under § 21.3305.

(c) Date of discontinuance under the applicable provisions of § 21.3135.

§ 21.3333 Rates.

(a) While the eligible person is enrolled in and pursuing a course of special restorative training the special training allowance will be computed at the basic rate of \$130 per month. This amount may be increased under the conditions provided by paragraph (b) of this section.

(b) If the cost for tuition and fees applicable to any such training averages in excess of \$41 per calendar month during a period of enrollment the basic monthly allowance may be increased by the amount that such average costs exceed \$41 a month, provided the guardian or legal custodian elects to have the eligible person's period of entitlement reduced by 1 day for each \$4.25 that the special training allowance paid exceeds the basic monthly rate of \$130. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less will be disregarded. Such charges will be recorded at the time the authorization action entering the eligible person into training is effected and will be revised subsequently if circumstances require such action.

These VA Regulations are effective September 30, 1965, except §§ 21.3136 and 21.3333 which are effective November 1, 1965, and §§ 21.3020 and 21.3021 which are effective November 8, 1965.

By direction of the Administrator.

Approved: December 2, 1965.

[SEAL]

CYRIL F. BRICKFIELD,
Deputy Administrator.

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