

**IOWA STATE DEPARTMENT  
OF EDUCATION**

(Cite as 13 D.o.E. App. Dec. 68)

**In re Grant Denial** :

Grin and Grow, Ltd. :  
Appellant,

v. : DECISION

Child Development :  
Coordinating Council, :  
Appellee. : [Adm. Doc. #3685]

The above-captioned matter was heard on December 18, 1995, before a hearing panel comprising Roger Stirler, chief, Bureau of Internal Operations; Judge Brown, consultant, Bureau of School Administration and Accreditation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant Grin and Grow, Ltd. [hereinafter "the Center"] was present in the persons of Mr. Michael Knapp, Director; Steve Trost, President of Grin and Grow, Ltd. Board of Directors; and Ms. Beth Remington, parent specialist. The Center was unrepresented by counsel. Appellee Child Development Coordinating Council [hereinafter, "the Council"] was represented by Ms. Donna Eggleston, Early Childhood consultant, Office of Educational Services for Children, Families, and Communities, also *pro se*.

The hearing was held pursuant to the authority of Iowa Code Chapter 256A (1995), and was conducted pursuant to the terms of 281--IAC 64.22.

On or about December 1, 1995, Appellant filed an affidavit of appeal protesting the termination of its program. Mr. Knapp received notice on November 16, 1995, which notified Appellant that its failure to receive National Academy of Early Childhood Programs [hereinafter "NAECP"] accreditation by the deadline of November 3, 1995, would result in termination of its funding. As a result of this termination, the program at the Center would cease operation under Council-sponsorship effective December 31, 1995.

Appellant appeals the denial based upon the failure of the NAECP to grant the Center accreditation. Appellant has appealed the NAECP decision and seeks a continuation of funding from the Council until its appeal with the National Academy is resolved.

I.  
**FINDINGS OF FACT**

The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

Iowa Code Chapter 256A establishes the "Child Development Coordinating Council." The Council is comprised of nine members who represent the various agencies or departments designated by the statute. The primary responsibility of the Council is to "promote the provision of child development services to at-risk three-year and four-year-old children." Iowa Code § 256A.2.

In order to promote a high standard of programming among its grantees, the Council has decided to condition the continued receipt of child development grants upon the grantees' attainment of accreditation by the National Academy of Early Childhood Programs ["NAECP"]. 281--IAC--64.15(5). Grantees were notified as early as May 30, 1993, that they would have to be accredited by NAECP to be eligible for grant renewals in 1995. In addition, administrative rules were promulgated by the Council to provide guidance to the grantees. Pursuant to these rules, grantee responsibilities are listed in pertinent part as follows:

Continuation programs shall participate in the Self-study and Accreditation Program of the National Academy of Early Childhood Programs. Continuation programs not able to obtain accreditation by April 15, 1995, and every April thereafter, may apply for a waiver of accreditation by March 15, 1995, and every March thereafter. Waivers shall be awarded at the discretion of the Council. Programs not attaining accreditation or not receiving a waiver of accreditation will be terminated.

Appellant Grin and Grow, Ltd. was established in 1943 as a war nursery. Grin and Grow now operates two centers in Waterloo with a combined operating budget of over \$500,000 annually. One of the centers operated by Grin and Grow is a program for 16 at-risk three- and four-year-olds called "Project High Hopes" [hereinafter "PHH"]. The funding for PHH is the program grant that is at issue here. Grin and Grow's other center is not affected by this appeal.

Project High Hopes is one of the original early childhood at-risk programs funded by the Council. Mr. Knapp has been responsible for overseeing the PHH grant program since its inception in 1989. The total program budget for PHH is around \$60,000. The grant at issue in this appeal amounts to \$56,186 which constitutes over 90% of PHH's total budget.

PHH is a continuation program that was unable to obtain NAECP accreditation by the April 15, 1995, deadline. On April 12, 1995, Michael Knapp applied for a one-time waiver from the Child Development Coordinating Council seeking more time to obtain the required accreditation. His request was granted and by letter dated May 3, 1995, Project High Hopes was advised that the waiver request was approved for the following reasons:

1. Self-study was in process and will be completed by May 15, 1995.
2. Agency is seeking accreditation for entire center in addition to Council program.
3. Agency has strong history of compliance with Council regulations and requests.
4. Agency has provided a fully-documented plan for completion of accreditation.

In an accompanying letter, the Council informed Mr. Knapp that: "In the event that your program does not receive accreditation by November 3, 1995, your funding will be terminated by December 31, 1995, and you will cease operation under Council support at that time."

NAECP accreditation decisions are made by a team of commissioners who are early childhood specialists. Commissioners review the results of the centers' self-study and validation visit when making decisions. The decision to accredit a center does not require 100% compliance with the criteria. Accreditation decisions are based on substantial compliance and rely on the professional judgment of the commissioners, rather than a weighted or point system. Only two decisions are possible: accredit or defer. (Exh. A.)

On October 30, 1995, Sandra C. Gilbert, assistant director of NAECP notified Mr. Knapp that the Commission had decided to defer accreditation status to Project High Hopes. Mr. Knapp was also notified that if a deferred program decides to continue to seek accreditation, three types of appeal are available:

- I. Criteria compliance;
- II. Procedural error; and
- III. Appeal to a second commission

Under the first appeal procedure, a program may notify the Academy that program improvements will be made to demonstrate compliance with the criteria that were unsatisfactorily met. The second appeal under "procedural error" is made on the grounds that validation procedures were not properly followed by NAECP. The

third appeal was chosen by Project High Hopes. Under this

scenario, the same validated program description is sent to a second commission. If the second commission upholds the finding of deferral, the only option available to the Center is to make the recommended program improvements and have another validation visit to have the improvements verified. No one could testify with any degree of certainty how long this entire process would take.

Mr. Knapp's position on appeal is that the funding for PHH should not be terminated because there is so much need for this program in Waterloo. He testified that Waterloo has one of the highest concentrations of at-risk families in the State. Project High Hopes is a collaborative effort between Grin and Grow, Tri-County Headstart, Regional Transit Commission, and the Waterloo Community Schools. Project High Hopes is unique and it is one of the few at-risk grant programs for three- and four-year-old children not located in a public school or headstart setting. PHH serves 16 children but has an extensive waiting list. Mr. Knapp asserts that because of a series of circumstances beyond their control, they were unable to complete the self-study and schedule the validation visit at an earlier time. He said it certainly was not an intentional error on their part since the Center agrees with the State's requirement that accreditation is desirable for the program.

Donna Eggleston testified on behalf of the Child Development Coordinating Council that all of the grant programs have known since the Spring of 1993 that NAECP accreditation would be required for continued funding. In fact, the programs were notified in the Spring of 1993 that by April 1994 accreditation would be required for continued funding. Because of the need to establish administrative rules for the process, the Council couldn't establish a deadline prior to April 15, 1995.

Out of the 73 original programs that started the accreditation process, 69 programs are now accredited. Three programs have been terminated for failure to receive accreditation by the required deadline. Two of these programs had received a waiver to extend their time until November 3, 1995, to obtain accreditation. One of the programs failed to receive a waiver and was terminated on May 30, 1995. Grin and Grow is the only program that seeks continued funding in spite of its failure to receive accreditation by the November 3, 1995, deadline.

Ms. Eggleston further testified that out of the 73 original programs, many others faced problems similar to those experienced by Grin and Grow -- yet those programs were able to obtain accreditation. She testified that the Council can't waive its accreditation requirements because of the fact that the program is needed in the community. There are many needs statewide that can only be funded with limited resources. The Council recognizes

the need is great in Waterloo, but there is only so much money and

the need is great in other areas too. Requiring NAECP accreditation is the method by which the Council seeks to raise standards for programs receiving these limited funds. According to Ms. Eggleston, this is the only way the Council has of providing a standard measure of quality across the board. If the Council ignores these standards and looks only to the amount of "need" in a community, then the criteria and standards get "pretty subjective and result in unpredictability for those writing the grants, as well as for those deciding how to award them."

When the May 3, 1995, "one-time" six-month waivers were granted to the few programs that needed them, the decision to grant the waivers was based on the fact that each of those programs had completed a self-study and had a validation visit scheduled by NAECP. Grin and Grow, however, was the only program that was granted a waiver without having its self-study completed. This was done because of its long history of compliance with Council standards and the assurance that the self-study and validation visit would be completed in time for accreditation by the November 3rd deadline. Because the NAECP decided to defer accreditation, by the time the Center is able to complete its appeal process and correct any deficiencies for accreditation, the process will most likely run beyond the end of the 1995-96 fiscal year (June 30, 1996).

## II. Conclusions of Law

The issue in this appeal is whether the Council properly terminated Project High Hopes' grant under the requirements of Iowa Code 256A (1995) and the implementing regulations of 281--IAC 64.

Under the latter regulations, the Council has made it clear that "[c]ontinuation programs not able to attain accreditation by April 15, 1995, and every April thereafter, may apply for a waiver. ... Programs not attaining accreditation or not receiving a waiver of accreditation will be terminated." 281--IAC 64.15(5). Additionally, 281--IAC 64.20 of the regulations states that the funding contract "may be terminated in whole or in part ... in the event that the grantee has not attained accreditation by the National Academy of Early Childhood Programs or has not been awarded a waiver of accreditation by the Council." Id.

Project High Hopes received a **one-time six-month waiver** of the accreditation requirement that extended the obligation to obtain accreditation to November 3, 1995. This waiver was unambiguous. There could be no question that it was a one-time waiver and that if accreditation was not attained by the deadline, the funding would be terminated. The fact that Project High Hopes was obligated to attain this accreditation was no mystery to Mr. Knapp.

The fact that the Center was not accredited by NAECP suggests that

the Program does not meet the standards that have been established by the Council for the award of its scarce funding resources. For the Council to extend its funding of the Center, pending the ability of PHH to attain accreditation, is to abdicate its standards. No legal authority exists for the Council to award funds to a continuation program which has not met the standards set by regulation and rule.

There is no dispute that the need for this program in the Waterloo area is great; nor that Project High Hopes has had a history of meeting all prior program requirements of the at-risk grant program *in the past*. Neither, however, is there is a dispute about its failure to meet the accreditation requirement which it has known about since 1993. Unfortunately, the Council has no alternative but to terminate funds to this program until such time as it meets the standards set by the Council.

All motions or objections not previously ruled upon are hereby denied and overruled.

**III.  
DECISION**

For the foregoing reasons, the decision of the Child Development Coordinating Council terminating funding for Project High Hopes for its failure to attain accreditation by November 3, 1995, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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Date

Ann Marie Brick, J.D.  
Administrative Law Judge

It is so ordered.

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Date

Ted Stilwill  
Director