UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of	**Docket No. 05-78-SP**
COMPTON COMMUNITY COLLEGE,	Federal Student Aid Proceeding
Respondent.	PRCN: 200440923355

Appearances: Warren S. Kinsler, Esq., Cerritos, California, for Compton Community College.

Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C. for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Compton Community College (Compton), located in Compton, California is a public 2-year institution. The Western Association of Schools and Colleges Community/Junior Colleges (WASCJC) accredited Compton on May 1, 1967,[1] making it eligible to participate in the various federal student aid programs that are authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq*. Within the U.S. Department of Education (ED), the Office of Federal Student Aid (FSA) is the organization that has cognizance over and administers these programs.

During the period of July 12-16, 2004, Institutional Reviewers from FSA's Seattle/San Francisco School Participation Team conducted a program review at Compton that examined its administration of the Title IV programs for the 2001-2002, 2002-2003, and 2003-2004 award years. FSA issued a final program review report on October 29, 2004, detailing a number of problems uncovered during the on-site review. Based on it's assessment that the extent of these findings indicated significant problems, FSA required Compton to perform a full file review of all Title IV recipients who received federal funds during the program review period. After multiple extensions, Compton reported its findings on March 4, 2005.

After reviewing Compton's submission, FSA issued a Final Program Review Determination (FPRD) on August 11, 2005. The FPRD identified ten findings --Compton appealed three of these

[1] WASCJC withdrew its accreditation of Compton on August 23, 2006. At the time of this appeal, however, Compton was accredited by WASCJC and was eligible for Title IV funding.

findings.[2] The findings (and their respective amounts in issue) allege that Compton (1) incorrectly calculated Federal Pell Grants ($498,577); (2) improperly awarded federal aid to non-regular students ($19,101); and (3) failed to document critical eligibility criteria, such as possession of a high school diploma or its equivalent ($248,529). FSA requested that Compton return a total of $892,910[3] for these violations. Compton's appeal, dated November 10, 2005, is the subject of the current proceeding. In its appeal, Compton disputes the extent of the violations, as alleged by FSA. Specifically, it claims that (1) only one student was overpaid $750 in Pell Grants, and when that figure is extrapolated to the universe of students, a liability of only $24,731.68 results; (2) no improper awards were given to non-regular students; and (3) additional documents it submitted establish the eligibility of all students in question.

The first issue is whether Compton failed to correctly award and disburse Federal Pell Grant funds. Pursuant to the provisions of 34 C.F.R. § 690.63, the amount of each Pell Grant award depends upon the length and nature of the student's academic program. In making this determination, an institution's obligation is two-fold. First, the institution must determine the student's enrollment status before payment of a Pell Grant. Second, the institution must maintain records that demonstrate the calculations it used to determine the amount of Pell Grants awarded. 34 C.F.R. § 668.24. FSA alleges that Compton must return $498,577 of federal funds, which is the extrapolated liability owed for the overpayment of Federal Pell Grants to eight students. Both FSA and Compton agree about the methodology on how to calculate Federal Pell Grant disbursements. They disagree, however, as to how many students actually received Pell Grant overpayments. FSA required Compton to conduct a full-file review to determine the extent it over-awarded Pell Grants.[4] The auditor found that eight students received overpayments. FSA accepted this number and in its FPRD assessed an extrapolated liability of $498,577. Subsequently, Compton informed FSA that the auditor had reduced the finding of the number of students who were over-awarded from eight to one. FSA rejected Compton's claim that seven of eight students were properly awarded, since Compton failed to provide the auditor's work papers with its appeal. Compton responded by providing additional evidence, but not the auditor's work papers. Compton claims this additional evidence supports the awards made to seven of the eight students. According to Compton, only one student was over-awarded $750 in Pell Grants, amounting to a liability of $24,731.69. FSA again rejected Compton's evidence as insufficient and continues to seek the return of $498,577 for that finding.

In considering this issue, it is important to note that this proceeding is governed by regulations promulgated under Subpart H of the general provisions. 34 C.F.R. § 668. It is well established that in Subpart H, the institution possesses the burden of proving by a preponderance of the evidence that the Title IV funds in issue were lawfully disbursed. In accordance with 34 C.F.R. § 668.116(d), to sustain its burden, the institution must establish, that (1) the questioned expenditures were proper and (2) the institution complied with program requirements. Here, the independent auditor found that Compton overpaid one student. When FSA questioned the auditor's findings, Compton provided student documentation supporting the auditor's assessment of liability. For instance, if what was claimed to be missing was a student's transcript, Compton provided a transcript; if what was claimed to be missing was a record of disbursement, Compton provided this

[2] The other seven findings were either uncontested by the school or did not result in monetary damages.
[3] Included within the demand for $892,921 is $13,627 for findings that were not appealed and, therefore, are not part of this proceeding.
[4] FSA originally required Compton to determine the extent of under-awards, as well as over-awards. However, FSA later determined that Compton would not be liable for under-awards, so there is no mention of under-awards in this decision.

record. Regardless, FSA rejected the auditor's findings and attestation that seven of the eight students were properly awarded and demanded to see the auditor's work papers. Compton bears the burden of persuasion, and I must determine if it has met its burden.

In the present case, *In re Ganaye Academy of Cosmetology*, Dkt. No. 97-54-SP, U.S. Dep't of Educ. (February 4, 1998) is instructive. There, when the auditor's findings were doubted because of inadequate audit trails, the court held that the institution satisfied its burden by providing missing documents that supported the calculations, even though the auditor's work papers were not provided. In the instant case, although Compton has not submitted the auditor's work papers, it has provided the missing records which show that seven students were properly awarded. If Compton had submitted these records prior to the issuance of the FPRD, this issue would not be before the tribunal today. Consequently, I see no reason to treat these documents differently merely because they were provided to the auditor, instead of FSA. More significantly, the auditor is an independent party, specially trained and certified, who takes an oath indicating the correctness of her findings. As a consequence, when I determine the credibility of the auditor's submission, I owe the auditor a certain degree of deference. I do note that FSA has not offered any evidence of the incorrectness of the auditor's findings other than mere skepticism that the auditor's findings are incorrect. FSA's skepticism does not rise to the level of persuading me to ignore or give effect to the auditor's attestation. On this basis, I find that Compton has proven by a preponderance of evidence that the Federal Pell Grants disbursed to seven students in dispute were lawfully disbursed. Therefore, Compton must return $24,731.69 to ED, which is the resulting extrapolated liability for the overpayment to one student.

The second issue is whether Compton improperly awarded federal aid to non-regular students. Pursuant to 34 C.F.R. § 600.2, a regular student is "a person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution." For this finding, FSA asks Compton to repay $19,101, which is the extrapolated liability for three non-regular students originally discovered by the auditor. Both Compton and FSA agree as to the definition of a "regular" student. They disagree, however, over whether Compton requires students to state a major before being considered a regular student. FSA alleges that Compton requires each student to declare a major before achieving regular status. FSA cites to Compton's Policy Manual, which states, "students are strongly encouraged to make an appointment with a college counselor to have an Educational 4-6 Semester Plan prepared and their major of study declared. Financial aid may be denied for inappropriate classes and the lack of an educational plan." FSA claims the term "strongly encouraged" indicates that declaration of a major is necessary before a student becomes a regular student and eligible for federal financial aid. Contrariwise, Compton disagrees with FSA's interpretation of its Policy Manual and argues that the three students in question are regular students. Compton maintains that declaration of a major is not part of its policy and that FSA's interpretation of the policy is incorrect. Compton points out that it simply encourages students to declare a major, but does not require it -- a student's declaration of an educational plan is enough to become a regular student. Furthermore, Compton claims that although declaration of a major is not required, the auditor later found that the three students in question had declared majors.

An institution has discretion to clarify certain broad federal regulations as long as the institutional definition remains within the bounds of the regulatory definition. *See In re Phillips College of Atlanta*, Dkt. No. 91-96-SA, U.S. Dep't of Educ. (February 23, 1994) (holding that "a school may change its definition of an academic year, assuming it complies with the regulatory

definition…"); *In re Edmondson Junior College*, Dkt. No. 93-7-SP, U.S. Dep't of Educ. (June 4, 1993) (finding that the "definition of a term school depends upon the actual definition of the academic calendar at the school"); *In re Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (May 31, 1991) (stating that an institution should develop its own standards of satisfactory progress, the content of which is "strictly an institutional concern"). The definition of a regular student falls within this category. There is no mandatory requirement in federal regulations requiring a student to declare a major to become eligible for federal student aid – many institutions allow students to declare a major at a later date. Clearly, an institution can establish its own standards for achieving regular status, assuming it abides by the definition set out in 34 C.F.R. § 600.2. However, an institution does not have unfettered discretion. For example, a new definition may not be applied retrospectively. In other words, an institution may not change the definition of "regular" status in its Policy Manual just to avoid liability.

Compton's claim that it does not require students to declare a major before being considered "regular" should be accepted, since Compton's requirement that students declare an educational plan before achieving regular status complies with 34 C.F.R. § 600.2. Compton's stance that students are not required to declare majors before being considered regular is persuasive. The language of Compton's Policy Manual may be, somewhat ambiguous, but this ambiguity is certainly not enough to establish that Compton's articulated definition should be overridden by FSA.

Compton offers an alternative argument that the auditor's subsequent findings show that the three students in question had declared majors. This argument purports to prove that Compton did not violate Title IV requirements, even accepting FSA's own interpretation. However, Compton fails to clarify whether the students declared majors before or after receiving federal funds. Even so, this alternative argument is unnecessary since I accept Compton's claim that it does not require students to declare majors before achieving "regular" status and that Compton has met its fiduciary responsibilities in the manner in which it carried out the required process of assuring that only "regular" students are disbursed Title IV funds. Therefore, Compton is not liable to pay back the $19,101 in issue, since it properly awarded Federal funds to only "regular" students.

The third and final issue is whether Compton failed to document critical eligibility issues. Pursuant to the provisions of 34 C.F.R. § 668.32, a student must possess a high school diploma or its equivalent, or satisfactorily pass an authorized ability-to-benefit (ATB) test to be eligible for Title IV program funds. Here, Compton appeals FSA's assessment of $249,514, which Compton allegedly owes for 61 students who did not meet this eligibility requirement. With its appeal, Compton submitted evidence of its auditor's most recent findings, which reduced the number of ineligible students in this category from 61 to 20 students. Compton also submitted additional documents purporting to show that the remaining 20 students satisfactorily passed an ATB test. These additional documents are student files, with hand-written notations indicating that these students met the aforementioned eligibility requirement. Each file either indicates passage of the "T.A.B.E." – English ATB test, or passage of the "S.A.B.E." – Spanish ATB test. In an effort to verify that information, FSA attempted to call these 20 students to verify their passing scores. FSA reached eight out of the 20 students and found that in some instances the purported ATB test passage was in the wrong language (i.e., the student's file says he/she passed the S.A.B.E., but the student speaks no Spanish, or vice-versa); and in other cases, the student had no recollection of taking the test at all. FSA did later discover that one student, from the 12 who were not called, had passed her S.A.B.E., so FSA reduced its findings to $248,529.

FSA also contests the auditor's findings as to this issue. FSA suspects that Compton gave the auditor the same type of handwritten records, which FSA believes to be fraudulently drafted. Compton argues that none of the files are fraudulent and offers additional evidence to support the validity of the 19 handwritten student files. This additional evidence, however, contains some substantial problems. Some of the student names listed do not correspond to the 19 students still at issue; and even the cases where names do correspond the files are missing significant information. In reviewing the record, it is important to separate the 61 students into two distinct categories. The first category consists of 20 students that Compton claims are eligible, but who were not confirmed by the auditor. FSA accepts that one student passed the ATB test, thus making this student eligible to receive Title IV funds. Based on my review of the evidence, Compton has not met its burden of proving that the remaining 19 students lawfully received Title IV funds. Handwritten notations and inconsistencies in the ATB results reported by Compton certainly do not qualify as proof by a preponderance of evidence. The second category consists of 41 students that the auditor determined were eligible to receive Title IV funds. FSA asserts that the auditor's findings cannot be trusted because Compton likely supplied the auditor with the same handwritten records that Compton submitted into evidence before the tribunal. With its responsive brief, Compton submitted a sample of documents identical to the documents that the auditor used in arriving at her determination. Compton's evidence is certainly more persuasive than a rather tenuous assessment of skepticism of the auditor's credibility. In this particular, the auditor's credibility is supported by the fact that she found that one-third of the students at issue improperly received Title IV funds. On this basis, I find that Compton is not liable for the 41 students that the auditor discovered had met the eligibility requirements. I further find that Compton failed to meet its burden of persuasion concerning 19 students. Therefore, Compton must pay back $40,116[5] to ED, which is the resulting liability for 19 ineligible students who received Title IV, HEA program funds.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Compton Community College pay to the United States Department of Education the sum of $64,847.69.

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Ernest C. Canellos
Chief Judge

Dated: July 23, 2008

[5] The calculation that gives rise to this liability is as follows: $41,101 (the auditor's findings for 20 students) - $985 (FSA's reduction for one eligible student ($249,514-$248,524)) = $40,116.