



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

In the Matter of

Docket No. 06-44-SA

**AMERICAN CENTER for TECHNICAL
ARTS & SCIENCES**

Federal Student Aid
Proceeding

Respondent.

ACNs: 03-2003-51194
03-2004-51381

Appearances: Glenn Bogart, Birmingham, Alabama, for American Center for Technical Arts & Sciences.

Jennifer L. Woodward, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

American Center for Technical Arts & Sciences (ACTAS) participated in the various federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the Office of Federal Student Aid (FSA) of the United States Department of Education (Department). On August 29, 2006, FSA issued a final audit determination (FAD) concerning ACTAS's compliance audit for the period January 1, 2003, through December 31, 2003, and its closeout audit for the period January 1, 2004, through September 30, 2004. The only finding in the FAD before me asserts that Respondent disbursed federal student aid to five ineligible students. As a consequence, FSA demands the return of \$11,993 to the Department for Pell Grant liability and the payment of \$11,365 to the holders of the applicable student loans.

The FAD reports that five of ACTAS's students were ineligible to receive Title IV funds because they did not possess either a high school diploma or its recognized equivalent; and in the

alternative, none of them had passed an independently administered ability to benefit test approved by the Secretary. 34 C.F.R. § 668.32(e)(1) and (2). ACTAS's auditor noted in its report that the institution did not obtain copies of the relevant documents from the students at the time of their application, but rather the institution relied upon the students' statements that they intended to obtain a diploma or its equivalent prior to receiving Title IV funds.

Of the five disbursements in question, ACTAS concedes liability for two of them. For the remaining three disbursements, ACTAS maintains that the Title IV disbursements were authorized because these three students had prepared a self-certification on their Free Application for Federal Student Aid (FAFSA) that said that the student "has received or will receive a high school diploma or GED before beginning attendance in the current award year." ACTAS believes that this certification is sufficient documentation to satisfy the regulatory requirement that the student have a high school diploma or its equivalence, thus eliminating the need for the student to pass an ability to benefit test. The institution lists the Federal Student Aid Handbook, 2005-06, Vol. 1, page 1-3 for its authority on this proposition. Further, ACTAS believes that there is authority for holding that by following the guidance in the Student Handbook when it admitted these three students on the basis of their certifications that it was provided with a safe harbor that protects it from any financial liability.

The language from the Federal Student Aid Handbook upon which ACTAS relies provides in part:

if a student indicates on the FAFSA that he has a diploma or GED, your school isn't required to ask for a copy, but if your school requires one for admission, then you must rely on that copy of the diploma or GED and not on the student's certification alone.

Federal Student Aid Handbook, 2005-2006, Volume 1, at 1-3.

According to ACTAS's September 2001 student catalog, the admissions requirements state that to be considered for admission to most of its programs, the candidate must have earned a high school diploma or GED certificate, and with the exception of the nursing assistance program, those without such a diploma or certificate, must attend GED classes given at the school. Additionally, its catalog describes ACTAS's Five-Step Admissions Process and Step 4 of that process is titled: "Submission of Transcripts." That section reiterates that the minimum level of education required is: "a high school diploma, its equivalent, or completion of twelve credit hours of courses at the college level with a grade of "C" or better, or passing the C-PAT for Nursing Assistant students."

Regardless of how ACTAS wishes to interpret the language in the Department's Federal Student Aid Handbook, the regulations at 34 C.F. R. § 668.32(e)(1 and (2) require that all Title IV recipients have a high school diploma or its equivalent to be eligible to receive federal student aid. Further, ACTAS's own admissions policy requires that all of its students have a diploma or

GED to be admitted to the institution. Also, ACTAS's interpretation of the Handbook is not supportable, and therefore, does not entitle it to any safe harbor protection. Clearly, ACTAS must obtain the appropriate document from its students to satisfy its own admissions policy, as well as document that the students are eligible Title IV recipients. A certification from an applicant that he or she has or will have such a diploma before beginning attendance is clearly insufficient for these purposes. The institution must have these documents in hand before Title IV funds can be disbursed. In their absence, ACTAS is unable to prove that the questioned expenditures were proper and must make the appropriate reimbursements. 34 C.F.R. § 668.116(d).

ACTAS notes that the period of time covered by this FAD overlaps with a period of time addressed in a final program review determination currently pending before the Office of Hearings and Appeals, and ACTAS is concerned it may be facing double liabilities for the same time period. FSA has shown that the period of overlapping review is only six months – from January 1, 2003 to June 30, 2003. To the extent there may be any duplication of liability during this six-month overlap, ACTAS should be given appropriate credit for any payments made for liabilities assessed in this proceeding. Improper disbursements covered by this finding were made to the following students:

<u>Student</u>	<u>Pell</u>	<u>FFEL</u>
Elizabeth F.	\$2000	\$1461
Aaron J.	3650	5239
Nicole J.	2000	1313
Samantha O.	2000	1573
Shania C.	<u>2343</u>	<u>1779</u>
	\$11,993	\$11,365

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that American Center for Technical Arts & Sciences must pay \$11,993 to the U.S. Department of Education for Pell Grant liability and pay \$11,365 to the holders of the applicable student loans.

Judge Richard F. O'Hair

Dated: July 12, 2007

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

Glenn Bogart
1228 15th Ave. S.
Birmingham, AL 35205

Jennifer L. Woodward, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110