



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

In the Matter of

EAST MISSISSIPPI COMMUNITY COLLEGE,

Respondent

Docket No. 12-14-SP

Federal Student Aid
Proceeding

PRCN: 200830626676

Appearances: Dr. Rick Young, President, for East Mississippi Community College.

Sarah L. Wanner, Esq., Office of the General Counsel, U.S. Department of
Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Eastern Mississippi Community College (EMCC) is a public institution of higher education consisting of its main campus located in Scooba, Mississippi and four remote branch campuses. EMCC participates 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. Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is charged with oversight of these programs.

From April 11, 2011 to April 14, 2011, FSA conducted a program review at EMCC to determine the institution's compliance with federal regulations pertaining to its administration of its Title IV programs. FSA program reviewers examined randomly selected student files from the 2009-2010 and 2010-2011 award years and on August 18, 2011, a program review report was issued. On December 12, 2011, FSA issued a Final Program Review Determination (FPRD) with one unresolved finding, i.e. that EMCC failed to properly monitor and apply its satisfactory academic policy (SAP) standards prior to disbursing Title IV funding to three students. The FPRD assessed a total liability of \$9,852¹ for that finding and, on January 23, 2012, EMCC filed the instant appeal.

¹ The Department did not assert liability for the total ineligible loan amount, but rather for the estimated actual loss to the government resulting from the ineligible loan amount. The total liabilities include (1) the amount of Pell

DISCUSSION

In order to be eligible to receive Title IV financial aid, a student must maintain SAP in his or her course of study according to the institution's published SAP standards. *See*, 34 C.F.R. § 668.32(f). Accordingly, institutions participating in federal student assistance programs must establish, publish and consistently apply reasonable standards for measuring whether an otherwise eligible student is maintaining SAP in his or her educational program. 34 C.F.R. § 668.16(e). If a student does not maintain SAP, but comes back into compliance during a subsequent grading period, the institution may consider that student as making SAP and, therefore, become eligible to receive Title IV funds, beginning with the next grading period. 34 C.F.R. 668.34(d).

EMCC's published policy states that the institution shall review a student's SAP once a year, at the close of each spring semester. This review determines whether the student has met the following standards: (1) cumulative 2.00 GPA, (2) course completion rate of 66 2/3%, and (3) program completion rate of no longer than 150% of the published length. If a student fails to meet all three of these standards, he or she will be placed on financial aid suspension and notified of this determination in writing. As a consequence, all approved Title IV financial aid will be cancelled and future awards will not be disbursed.

Any appeal must be made in writing and filed within 30 days and must address in detail the reasons why the student could not maintain the required level of performance. The Financial Aid Office must respond to the appeal within 21 days of its receipt. When a student files an appeal, a copy of the student's grades, the student's appeal statement, and other accompanying information, if submitted, is reviewed by the Assistant Director of Financial Aid, Director of Financial Aid, or the Vice President (VP) for Financial Aid. The appeal is accepted or rejected and the student is notified of that decision in writing. If the appeal is rejected, the student is informed of the reasons for rejection. If the appeal is approved, the student is informed that his or her status is no longer "financial aid suspension," but rather, "financial aid probation." Financial aid probation requires that in order to come back into compliance with SAP, the student must earn a 2.00 GPA, must complete each class attempted with a passing grade, and must not withdraw from any attempted classes during the following term. If a student is not satisfied with the appeal decision, the appeal is then submitted to the Financial Aid Committee, which is comprised of two faculty members, two students, two staff members, and the VP of Financial Aid. The Financial Aid Committee either affirms the appeal decision or sets the appeal decision aside and outlines other terms of probation for the subsequent term.

In the FPRD, FSA did not challenge the efficacy of EMCC's announced SAP standards as compliant with the provisions of 34 C.F.R. § 668.16(e). Rather, the issue is whether EMCC adequately monitored or applied its SAP standards prior to distributing Title IV funds to the three students at issue. In all three situations, there is no dispute about the initial decision to

_____ funds dispersed; \$7,456 plus \$279.04 for the cost of funds, and (2) the estimated actual loss resulting from the ineligible loans; \$2,116.72. The estimated actual loss to the Department for the ineligible loans was calculated based on the total amount of FFEL and Direct Loan funds disbursed (subsidized and unsubsidized) and EMCC's most recent cohort default rate. *See* ED-1-8. For a complete description of the estimated actual loss formula, *see In re Christian Brothers University*, Docket No. 96-4-SP, U.S. Dep't of Educ. (January 7, 1997).

place each student on financial aid suspension, but rather EMCC has the burden of proof by a preponderance of the evidence to show that it complied with its SAP policy as well as federal regulations when it distributed Title IV funds to these students. 34 C.F.R. § 668.116(d).

Student #3

EMCC placed student 3 on financial aid suspension at the close of the spring 2006 semester after conducting a routine SAP review. Student 3 did not appeal the suspension immediately, but instead appealed on August 16, 2009 when he applied for reenrollment at EMCC for the fall 2009 term. Although his appeal was denied on August 17, 2009, the student enrolled for the fall 2009 term. On October 23, 2009, EMCC disbursed Title IV funds to this student although he was not in compliance with its SAP standards.

EMCC claims that it reversed the academic suspension and disbursed the Title IV funds after student 3 requested and conducted an interview to discuss his midterm grades, which had improved enough to persuade the financial aid staff of his eligibility to receive funds on a probationary basis. Also, EMCC points out that student 3 met SAP standards by the end of the fall 2009 semester and, therefore, made good use of the federal funds.

However, as established by EMCC's published SAP policy, if a student is not satisfied with the outcome of a financial aid suspension appeal, he or she can further appeal the suspension by submitting it to a Financial Aid Committee. EEMC did not establish that it followed this policy before it disbursed Title IV funds to student 3. It provided no evidence to show that student 3 was dissatisfied with the initial appeal decision, no evidence to show that student 3 requested an appeal hearing by the Financial Aid Committee, and no evidence to show that the Financial Aid Committee considered such an appeal.

34 C.F.R. § 668.34(d) states that when a student fails to maintain SAP but comes into compliance with the institution's requirements by the end of the next grading period, the institution may consider the student as making SAP beginning with the next grading period. EMCC did not require student 3 to complete a grading period without receiving Title IV funding. Instead, EMCC disbursed funds to student 3 during fall 2009. Therefore, while it is commendable that student 3 was able to reestablish academic success, it was not in EMCC's power to disburse Title IV funds in order to reestablish this status. Therefore, since EMCC failed to demonstrate that it acted in compliance with its published SAP policy in regards to student 3, it must repay \$2675 in Pell grant funds disbursed to this student.

Student #14

EEMC placed student 14 on financial aid suspension at the close of the spring 2006 term after conducting a routine SAP review.² On August 16, 2006, student 14 submitted a letter of

² EMCC claims that student 14 was placed on financial aid suspension in May 2010 and appealed the suspension in August 2010. However, this contention is clearly a mistake. The Title IV funds in question were disbursed in fall 2009 and spring 2010, which is before EMCC alleges student 14 was placed on financial aid suspension and

appeal that was approved on August 17, 2006. The appeal decision allowed her to enroll for one “probationary” term, during which she could only take two classes and was required to maintain SAP. Student 14 enrolled for two classes in fall 2006 but failed to meet SAP standards. She did not reenroll at EMCC for the spring 2007 term, but rather took classes at Itawamba Community College (Itawamba) from spring 2007 through summer 2009. At Itawamba, she completed 28 transferrable credits and received a 2.08 GPA. Student 14 reenrolled at EMCC for the fall 2009 term and received Title IV funding.

FSA alleges that EMCC violated federal regulation when it disbursed Title IV funds to student 14 because she was not in compliance with EMCC’s SAP standards. FSA points out that student 14’s performance at Itawamba was insufficient to put her into compliance with SAP standards, even if the credits had been transferred to EMCC. FSA also argues that EMCC’s reliance on the August 16, 2006 appeal to grant Title IV funds was inappropriate because student 14 already used that appeal approval to enroll for the granted probationary term, fall 2006.

In order to justify its disbursement of Title IV funds, EMCC argues that the student made significant academic progress at Itawamba, which persuaded the Director to reinstate student 14’s eligibility to receive Title IV funds. EMCC claims that this consideration, as well as the resolution of previous health issues, was used as the basis to approve her suspension appeal from August 16, 2006 to allow one probationary period, fall 2009, regardless of the fact that student 14 enrolled for classes during the fall 2006 term following the August 17, 2006 appeal approval.

EMCC’s disbursement of federal funds to student 14 for the fall 2009 term was improper. First, the credits from Itawamba were not transferred to EMCC and, therefore, there is no basis for relying on them to determine whether student 14 met EMCC’s SAP standards. Even if the credits had been formally transferred, EMCC concedes that they would not have removed the overall deficiency from this student’s records and she still would not have been in compliance with EMCC’s SAP standards. Rather, the Financial Aid Director considered the Itawamba credits informally persuasive in determining that student 14 should be eligible to receive Title IV funds. Also, federal regulation requires that when a student fails to meet SAP standards, they must take a semester to come back into compliance before being eligible to receive Title IV funds for the following semester. 34 C.F.R. § 668.34(d). EEMC provided no evidence to show that student 14 was in compliance with SAP standards before disbursing Title IV funds in 2009.

Second, it is inaccurate for EMCC to argue that it relied on the appeal approval from August 17, 2006 to grant funds for fall 2009. Following the appeal approval, student 14 enrolled for classes in fall 2006 but failed to maintain SAP. In other words, student 14 had already taken advantage of the granted probationary period when she enrolled for the fall 2006 term. EMCC did not provide any basis for which it should have granted student 14 an additional probationary period for fall 2009. Consequently, EMCC failed to demonstrate that it acted in compliance with its published SAP policy before disbursing Title IV funds to student 14. EMCC owes \$2006 in Pell funds and the estimated actual loss resulting from \$8090 in ineligible loans disbursed.

appealed. Rather, a review of student 14’s documents clearly shows that she was placed on financial aid suspension in spring 2006 and appealed on August 16, 2006.

Student #34

EEMC placed student 34 on both academic suspension and financial aid suspension at the end of spring 2010. Student 34 was asked to “sit out” the summer 2010 term in order to remedy the academic suspension and become eligible for reenrollment for fall 2010. On June 22, 2010, student 34 appealed the financial aid suspension in order to become eligible to receive Title IV funding for his next semester of enrollment. His appeal was approved on July 14, 2010. Student 34 received Title IV funds when he reenrolled in fall 2010 on academic probation although he was not in compliance with SAP standards.

FSA alleges that EMCC violated 34 C.F.R. § 668.16(e)(1) and 34 C.F.R. § 668.34(d) when it enforced student 34’s academic suspension but set aside the financial aid suspension and granted him Title IV funds before he was back in compliance with SAP standards. FSA argues that if student 34’s circumstances warranted academic suspension, they should also warrant financial aid suspension. EMCC claims that academic suspension and financial aid suspension are unrelated classifications that warrant treatment as two separate issues. Because of the distinction between the classifications, EMCC argues that it was permissible to place student 34 on academic suspension and make him sit out a semester, but approve his financial aid appeal for the next semester he was permitted to enroll.

Federal regulations consider an institution’s SAP standards to be reasonable when they are the same as or stricter than the institution’s standards for an enrolled student not receiving Title IV assistance. 34 C.F.R. 668.16 (e) (1). In other words, SAP standards cannot be applied more leniently to financial aid situations than to other situations. As applicable here, if student 34’s circumstances warranted academic suspension under EMCC’s SAP standards, they should have also warranted financial aid suspension. EMCC was not at the liberty to enforce an academic suspension by making the student “sit out” a semester, while not requiring him to complete a semester without receiving Title IV funds in order to show that he was back in compliance with SAP standards. 34 C.F.R. 668.34 (d). Therefore, EMCC failed to demonstrate that it acted in compliance with federal regulation before disbursing Title IV funds to student 34. EMCC remains responsible for the repayment of \$2775 in Pell funds and the estimated actual loss resulting from \$2250 in ineligible loans disbursed to this student.

ORDER

On the basis of the forgoing, it is hereby ORDERED that the East Mississippi Community College pay to the U.S. Department of Education the sum of \$9,852.

Ernest C. Canellos
Chief Judge

Dated: August 2, 2012

SERVICE

A copy of the attached document was sent by certified mail to the following:

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