



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

BAYTOWN TECHNICAL SCHOOL, INC.
Respondent

Docket No. 91-40-SP
Student Financial Assistance
Proceeding

Decision of the Secretary

This matter comes before the Secretary on appeal by the U.S. Department of Education, Office of Student Financial Assistance Programs (SFAP), of the Decision issued by Administrative Law Judge Daniel R. Shell (ALJ) on January 13, 1993. In his decision, the ALJ struck down the violations set forth in SFAP's final audit determination and dismissed the matter in favor of Baytown Technical School, Inc. (Baytown), with prejudice. In making his determinations, Judge Shell found that the state of Texas properly imposed a retroactive accreditation of Baytown's new campuses and additional curriculum. Judge Shell further found no Federal regulations applicable to nullify Baytown's eligibility to receive SFAP funds. Judge Shell also found no support for SFAP's argument that Baytown improperly converted its clock hour program to a credit hour program in order to qualify for additional Pell Grant funding. Finally, Judge Shell found the admission of Baytown's exhibits was proper. For the reasons outlined below, I affirm the ALJ's decision.

DISCUSSION

In its final audit determination, SFAP concluded that: (1) Baytown distributed \$3,433,517 of Title IV, Higher Education Act (HEA) program funds to students enrolled in an ineligible nursing program and at two ineligible campuses; and (2) that Baytown assigned an excessive number of credit hours to its programs which resulted in an overaward of \$605,000 in Pell Grant Program funds. On appeal, SFAP moves the Secretary to uphold the final audit determination and reverse the decision of the ALJ. I take each of the above questions in turn, below.

I. BAYTOWN'S BRANCH CAMPUSES AND ADDITIONAL CURRICULA

In order for a student to be eligible to receive Pell Grant, Supplemental Educational Opportunity Grant (SEOG), or Guaranteed Student Loan (GSL) program funds, the student must be enrolled in an eligible program at an eligible institution. 20 U.S.C. Sections 1091 and

1094, and 34 C.F.R. 668.7. One of the requirements of eligibility for a for-profit trade school like Baytown is that it be accredited by a nationally-recognized accrediting agency. 20 U.S.C. Sections 1088(b)(4) and 1085(c)(4). The procedures governing institutional eligibility, including requirements regarding branch campuses and additional curricula, were originally contained in SFAP Federal Student Financial Aid Handbooks. On May 21, 1988, they were codified at 34 C.F.R. Part 600. Among other things, the new regulations provided that eligibility for a new location or curriculum was established on the date the Department received all documentation it needed to make the eligibility designation. 34 C.F.R. Section 600.10(a). Prior, eligibility was established on the date the accrediting authority made the eligibility decision.

No doubt, the facts underlying the accreditation and eligibility of Baytown's branch campuses and new curricula are complicated (see ALJ Dec. at 4-9, SFAP Br. at 8-14). It is important to note, however, that at the time Baytown dispersed SFAP funds to its students, the applicable guidance on accreditation and eligibility provided that eligibility for a new location was established on the date the applicant institution received accreditation from its accrediting agency for that location. SFAP Br. at 7.

The main campus of Baytown, located on South Airhart Drive in Baytown, Texas, was properly designated as an eligible institution by the Department on March 18, 1986. There, Baytown offered courses in welding and industrial radiography. In November of 1986, Baytown began operating a new campus at a different Texas City location, which offered a nursing assistant program. On January 20, 1988, Southern Association of Colleges and Schools (SACS), approved Baytown's offering of a nursing assistant program at any location, including the North Alexander Street location.

On June 15, 1987, Baytown closed its South Airhart Drive location, phased out its welding program, and transferred the remaining students and faculty to the North Alexander Street location. As a result, the North Alexander Street location became Baytown's new main campus. On November 5, 1987, SACS approved the change of location of Baytown's main campus from South Airhart Drive to North Alexander Street.

SFAP argues, in essence, that SACS' June 21, 1989, grant of retroactive accreditation of the Texas City and North Alexander locations triggered the requirement of 34 C.F.R. Section 600.10(a) (that eligibility for a new location or new curricula is established upon the Department's receipt of all information relevant to making such designation). SFAP Br. at 26-28. Further, SFAP argues, SACS may not retroactively grant accreditation; thus neither the new curricula, nor the new campus were effectively accredited at the time Baytown distributed SFAP funds. *Id.* at 30-31. However, the State of Texas, like any state, may apply its own laws in any lawful manner it chooses. Moreover, prior to its June 21, 1989, grant of retroactive accreditation, and during the relevant period Baytown dispersed SFAP funds, the current regulation, 34 C.F.R. Part 600, did not exist, and programs eligible for HEA participation at an old prior-approved location were also considered eligible at the new location without additional approval. In this case, Texas chose to retroactively accredit one of its school's programs and locations, and this Department may not choose simply to ignore that

action. Nor may SFAP rely on Part 600 to impose a new requirement that did not at the relevant time exist.

II. CONVERSION OF CLOCK HOURS TO CREDIT HOURS

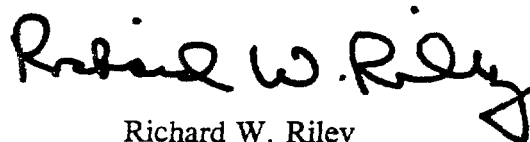
Also without sufficient support, SFAP argues that Baytown improperly converted its clock hour programs to credit hour programs in order to inflate the number of hours offered and, thereby, make Baytown eligible for additional Pell Grant funding. Interestingly, SFAP admits that the Department has no final regulations on converting clock hour programs to credit hour programs. SFAP Br. at 50. SFAP further admits that institutions are free to make such conversions so long as the conversion is not unreasonable. *Id.* SFAP argues, however, that when Baytown converted its programs from clock hours to credit hours, "it did not keep the academic year equivalencies that ED required for such conversions, and it did not include enough work for a semester hour." SFAP Brief (Br.) at 45. However, the "equivalences" and resultant "ratios" referred to by SFAP do not create a regulatory requirement where there clearly is not one. Moreover, SFAP's argument regarding regulations which admittedly apply only to the end result of Baytown's conversion process concerns this tribunal. Without more, this tribunal is hard-pressed to persuasion that Baytown "clear[ly]....converted its programs solely to obtain more Pell Grant funds." SFAP Br. at 48. This tribunal is even harder-pressed to ascribe a regulatory violation on the basis of regulatory language that does not squarely address this issue.

III. RESPONDENT'S EXHIBITS

Finally, SFAP takes four pages to argue that Judge Shell impermissibly allowed the introduction of Baytown's exhibits in violation of the very specific requirements of 34 C.F.R. Sections 668.113 (b) and 668.116 (e)(2). However, SFAP's argument is short-sighted and fails to consider the ALJ's responsibility to oversee the course of the administrative process and ensure a fair and impartial proceeding. Judge Shell decided, in his capacity as a Hearing Official, that the admission of respondent's exhibits was consistent with his obligation to provide a fair hearing and would further such proceedings. I find no grounds upon which to disturb that decision on appeal.

Accordingly, and for the reasons described above, the decision of the ALJ is affirmed.

So ordered this 12th day of April, 1994.



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