



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

CENTRAL STATE UNIVERSITY,

Respondent.

Docket No. 12-32-SA

Federal Student Aid Proceeding

DECISION OF THE SECRETARY

This case arises from an appeal by Central State University (Respondent or CSU) of the Initial Decision rendered on April 15, 2013, by Administrative Judge Richard F. O’Hair. In the appeal before Judge O’Hair, Respondent requested review of one finding (Finding No. 10-1) from the Final Audit Determination (FAD) issued by the Office of Federal Student Aid (FSA) of the U.S. Department of Education (Department) on March 26, 2012. Finding No. 10-1 included a number of counts against CSU for student information verification violations made during the 2009-2010 award year. CSU challenged the findings related to 14 students in the proceeding below, and Judge O’Hair affirmed the FAD for all 14 students. Liability was assessed at \$591,597.97.

I

On May 17, 2013, Respondent timely appealed Judge O’Hair’s decision and contested the findings related to six students (#s 29, 53, 88, 117, 186, and 245).¹ On June 19, 2013, FSA timely filed its response. FSA provided arguments related to four of the six students. It further stated that liabilities related to two students (#s 117 and 186) could be “eliminated,”² did not provide any response related to the two and removed those students from the liability calculation. Thus, the appeal now before me involves allegations of CSU’s failure to complete verification for four students (#s 29, 53, 88 and 245), as required under 34 C.F.R. §§ 668.54 through 668.59. Here, the burden falls on CSU. To succeed in this appeal, CSU must demonstrate by a preponderance of the evidence that it complied with the program requirements and that the Title IV funds were properly expended.³

¹ Although CSU stated that it was only appealing the findings for five students, its brief included arguments related to six. *See, generally*, Central State University’s Appeal to the Secretary (May 17, 2013) (hereafter referred to as “CSU Brief”).

² *See*, Federal Student Aid’s Brief in Response to Central State University’s Appeal to the Secretary (June 19, 2013) (hereafter referred to as “FSA Brief”), fn. 2.

³ *See*, 34 C.F.R. 668.116(d).

II

An institution participating in 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.* must demonstrate that it is capable of administering Title IV funds properly. 34 C.F.R. § 668.16. In doing so, an institution owes the Department the highest standard of care and must comply with all Title IV statutory and regulatory requirements. 34 CFR § 668.82(b). One of the many regulatory requirements is that the institution must accurately compute a student's expected family contribution (EFC); it must also verify the accuracy of any information provided by a student who is selected for verification.⁴ Throughout this process, it is incumbent upon the institution to resolve discrepancies between any conflicting information, as well as make appropriate inquiries where the institution has reason to believe the information provided in support of the EFC calculation may be inaccurate. 34 C.F.R. §§ 668.16(f) and 668.54(a)(3).

In the present case, both the FAD and the Initial Decision concluded that CSU did not satisfactorily complete the verification process for a number of students who were selected for verification. CSU now appeals the determination in the Initial Decision that it did not satisfactorily complete and document the verification process for four of the 313 students selected by FSA for verification.⁵ Specifically, Respondent contests the finding for students numbered 29, 53, 88 and 245.

For Student #29, the FAD concluded that verification was incomplete for two reasons: the presence of conflicting information about the student's parents' incomes (they did not file a tax return, but information on the Verification Worksheet suggested that they had income sufficient to require that they file); and because part of the Verification Worksheet was missing.⁶ The hearing official concluded that verification for this student was incomplete, noting that the conflicting information about the reported income required resolution. He did not address the issue of the Verification Worksheet.

Upon review of the record, it is clear that the finding in the FAD was incorrect and that the Verification Worksheet was complete.⁷ Regarding the ambiguity in the reported income of the parents, the determinations in the FAD and the Initial Decision were based on figures written

⁴ Information required to be verified includes household size, number of household family members in college, adjusted gross income (AGI), U.S. taxes paid, certain types of untaxed income and benefits (*e.g.*, social security benefits, child support, etc.), and all other untaxed income included on the U.S. income tax return, excluding information on the schedules. 34 C.F.R. § 668.56.

⁵ Due to the high error rate that FSA found during its audit of CSU, FSA required CSU to complete a complete file review of all Title IV award recipients during the 2009-2010 fiscal year. FSA selected 313 of the 1703 students for verification. After CSU completed verification of the files for these 313 students, FSA found that 36 students in the sample were ineligible to receive Title IV funds. CSU provided further information and documentation, reducing the number of ineligible students to 14, which were the subject of the appeal in the Initial Decision. Of these 14 students, CSU now appeals the findings related to six students, and four of the six are contested. *See*, Initial Decision, p. 2.

⁶ *See*, Exhibit R-19, p. 31.

⁷ *See*, Exhibit R-1-6 and R-1-7 which contains both pages of the student's Verification Worksheet.

next to and outside of the box provided on the form where the student reported his parents' incomes. FSA believed, and the hearing official concurred, that these additional notes raised several unresolved questions. FSA asserted that if the income reported inside the box was correct, then it was incumbent upon CSU to inquire as to how the family subsisted on this amount. If the income noted outside of the box was correct, then the family would have been required to file a tax return, and no return was included in the file.

CSU contended that the notes in the margin of the Verification Worksheet, outside of the box, were made by a financial aid officer, and that the figures inside the box were accurate. As such, the parents were not required to file a tax return. CSU confirmed this by obtaining evidence of the parents' non-filer status.⁸ CSU further asserted that the student's file contained additional information about untaxed income received by the parents, thus eliminating the need to inquire further whether the family had sufficient income to subsist.⁹

FSA countered that, even assuming the income information for the family was correct as listed (inside the box), CSU still had the obligation to "verify how this family could have subsisted on less than \$4,000 per year."¹⁰ The hearing official concurred with FSA and found that verification was not properly performed for this student.¹¹

Thus, the issue before me is whether CSU took sufficient steps to reconcile the allegedly conflicting information on the Verification Worksheet related to the student's parents' incomes. After reviewing the Verification Worksheet, it is my determination that the income figures listed under "amount" inside the box constituted the information intended for submission and consideration.¹² Moreover, CSU took the additional step to document the student's parents' non-filer status. The documentation in the file is sufficient to demonstrate that the figures provided in the designated space on the Verification Worksheet (as opposed to in the margin) were the intended amounts. In this respect, I find that CSU resolved the ambiguity of the parents' level of income. No tax return was required.

The next question is whether CSU had an obligation to pursue a further line of inquiry about the sufficiency of the family income to support the family. I agree that the family income may have seemed inadequate to support a family of four; however, I do not believe the appropriate line of inquiry was how the family could have subsisted on this income. Rather, when faced with information that seems improbable, an institution has the obligation to make additional inquiries to verify that the amount reported was accurate. 34 C.F.R. 668.54(a)(3). This is consistent with my holding in the *EdNet* case, where I determined that a school is required to verify information reasonably believed to be inaccurate when that information is used

⁸ See, Exhibit R-1-9.

⁹ CSU contends that the parents received \$51,000 in untaxed income from the father's pension. CSU Brief, p. 3. FSA clarifies that CSU misreads the figure, which is actually \$1,050. See, FSA Brief, p. 5.

¹⁰ FSA Brief, p. 6.

¹¹ The hearing official stated, "If the correct income level was \$2900, CSU should have verified how this family of four with two in college could have subsisted on that amount" and relied on my decision in *In re EdNet Career Institute*, Dkt. No. 07-41-SP, U.S. Dep't of Educ. (Nov. 12, 2010) (Decision of the Secretary). Initial Decision at 3.

¹² The purpose of the notes in the margin, outside of the box, is not clear. However, because the student provided information in the manner requested, *i.e.*, inside the box, I do not need to consider the numbers outside of the box for this analysis.

to calculate the student's EFC.¹³ CSU argues that documentation in the student's file showed that the father received \$51,000 in untaxed income from his pension and that this amount was sufficient for the family to subsist.¹⁴ Thus, CSU contends that it did not have any reason to suspect that the family's reported income was conspicuously low or improbable and felt that no additional inquiries were necessary.

FSA disputes this conclusion by producing an enlarged copy of the income statement that showed an image of the \$51,000 figure. This image reveals that the actual amount was \$1,050.¹⁵ Thus, CSU erred in its reading of the document, and as a result, it considered incorrect amounts when determining the student's EFC. By making an error of this magnitude, I find that CSU failed to act with the highest standard of care and diligence that it owes the Department when administering Title IV funds, consistent with its obligations under 34 C.F.R. § 668.82(b). Furthermore, the record includes information about parental income from various sources, and yet none of these figures matched the information contained in the Verification Worksheet. This constitutes a discrepancy that required resolution. CSU failed to reconcile this conflicting information. For these reasons, I find that verification for Student #29 was not completed.

Regarding Student #53, FSA alleged that verification for this student was incomplete because the student mistakenly used the information from her 2008 tax return to complete a 2008-2009 Verification Worksheet.¹⁶ The student properly followed the instructions on the (incorrect) worksheet to transfer the amounts from certain lines on her tax return. However, because she was using the incorrect worksheet, the cross-referenced items did not correspond, and the information she filled in did not match the information requested. CSU conceded this point but argued that the student provided the correct tax return, which allowed CSU to verify the student's EFC for the appropriate year. For this reason, CSU believes that verification was complete for Student #53.

The record is clear and undisputed in this matter: Student #53 provided the incorrect information on her Verification Worksheet. Even though the student's tax information was correct, the incorrect information on the Verification Worksheet created a discrepancy that required resolution. CSU failed to resolve it. For this reason, the hearing official's finding for Student #53 is upheld.

For Student #88, the record includes a 2009-2010 Verification Worksheet signed by both the student and his father; the student's income tax return; and a signed statement by the student's father explaining that he (the father) received unemployment benefits and did not file taxes for the year. FSA asserted that CSU failed to complete verification for this student when it did not "answer the question of how a family with no other reported means of support subsisted on \$5,292 plus either the minimum amount, the maximum amount, or something in between, from Ohio's weekly unemployment benefits."¹⁷ CSU countered that the signed statement was sufficient inquiry and documentation of how the family survived, and therefore, the verification

¹³ *EdNet, supra*, p. 5.

¹⁴ CSU Brief, p. 3.

¹⁵ *See*, ED Ex. 1-8, included as an attachment to FSA Brief.

¹⁶ The student used the proper tax return but completed the wrong Verification Worksheet. She should have completed a 2009-2010 Verification Worksheet.

¹⁷ FSA Brief, p. 8.

process was complete. Judge O’Hair found that CSU had an obligation to further pursue the issue.

I disagree with the hearing official on this matter. I find that CSU made the proper inquiries about the family’s income. As I determined in the *EdNet* decision, it is appropriate for an institution to make an inquiry to confirm a family’s income where a student’s reported family resources are conspicuously low.¹⁸ As distinct from the *EdNet* decision where no such inquiry was made, however, here, CSU did ask the father for additional information about the family’s income and received a signed statement attesting to the father’s unemployment benefits. I find that this additional inquiry, evidenced by the signed statement from the student’s father, satisfies CSU’s obligation to verify the student’s information where there may be questions about its accuracy.¹⁹

However, CSU ultimately failed in its obligation to resolve discrepancies in Student #88’s file because it did not reconcile the conflicting information in the Verification Worksheet (where the father listed no income) and the father’s signed statement (where father indicated that he received unemployment benefits). Because the Verification Worksheet specifically asks for any income received in 2008, even for non-filers, and CSU had information about some income received, the school should have noted and resolved this discrepancy. Based on the record, it did not. For this reason, I concur that CSU did not properly perform verification for Student #88.

As to Student #245, FSA proffered two arguments in support of its contention that CSU did not complete verification of the student’s file. First, FSA argued that Respondent had the obligation to resolve the conflict that existed between the student’s alleged independent status and his lack of income. Second, FSA concluded that the amount of conflicting information in the student’s file regarding the student’s independent status provided ample basis for a “reasonable financial aid officer to question and resolve it.”²⁰

In the FAD, verification was deemed unperformed because Student #245 listed no income nor public benefits while also stating that he had a dependent child. FSA asserted that this was a discrepancy on its face that required resolution, that logic dictated that some income is required to support a child. On appeal, CSU clarified that Student #245 did not support a child²¹ but was nonetheless considered to be independent.²² CSU further argues that nothing in the

¹⁸ See, *EdNet*, *supra*, p. 5.

¹⁹ To be clear, the *EdNet* holding applies to cases where a dependent student’s reported family income is conspicuously low relative to the family size. The obligation for the institution in such cases is to make an inquiry to confirm the income as reported is correct or, if additional information is provided, to update the student’s file accordingly.

²⁰ FSA Brief, p. 11.

²¹ The student listed the child as a dependent on his Verification Worksheet and then crossed out the child’s name and initialed the correction. CSU explains that the student did not provide more than half of the child’s support during the 2009-2010 year, as per the Worksheet instructions, and for this reason, the student crossed out the child’s name.

²² A student supporting a child is considered “independent” for purposes of Federal financial aid considerations. When the student removed his child from the Verification Worksheet, CSU seems to have based its determination that the student was independent, in part, on a custodial order from 1997, which showed that the student was in a legal guardianship. FSA argues that the court order, dating to when Student #245 was nine years old, is insufficient to verify the student’s independent status. FSA further notes that nothing in the record indicates that Student #245

regulations requires documentation of a student's independent status and that it "appropriately relied on the information provided by the student stating that the student was independent."²³

After a review of the record as related to Student #245, it is my belief that there is sufficient information in the file to support the determination that this student is independent.²⁴ I base my conclusion on CSU's representation that the student provided information stating that he was independent and that the Department's regulations do not specifically require further substantiation of that claim.²⁵ Furthermore, I find the Verification Worksheet to be persuasive. The student filled this form out in a manner consistent with independent status. He provided no parental information and is the sole signatory on the form. In this manner, I believe that the student indicated his independent status. CSU did not need to provide further documentation of this claim.²⁶ In this regard, I disagree with FSA and the hearing official and find that, relative to the student's claim of independence, verification was sufficient.

However, for the verification process to be performed properly, an institution must also resolve any discrepancies in the student's file, even where a student is deemed independent.²⁷ Here, Student #245 was independent, and yet he listed no income. The only resource that the student listed came in the form of a handwritten note, which read "Receive help from family," on the Verification Worksheet.²⁸ No further information was provided. This note created a discrepancy, which went unresolved. As with Student #88, here too, CSU was obligated to resolve this conflict between the statement indicating some form of support and the lack of reported income on the Verification Worksheet. Furthermore, although the student retracted his declaration of providing for a dependent child, the question remained as to how a person with no income could support himself. For these reasons, I sustain the finding in the FAD and the Initial Decision that verification was unperformed with respect to Student #245.

was an orphan, a ward of the court or in a legal guardianship after the age of 13 -- any of which would allow the student to be considered independent for Federal aid purposes -- and asserts that the conflicting information about the student's status required resolution.

²³ CSU Brief, p. 8.

²⁴ The court order from 1997 is irrelevant to the student's independent status because it does not reveal his situation immediately prior to his turning 18. *See*, 20 U.S.C. § 1087vv(d)(1)(C).

²⁵ CSU Brief, p. 8.

²⁶ The regulations do not require a school to document a student's claim of independence for Title IV aid.

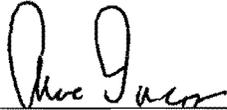
²⁷ *See*, 34 C.F.R. § 668.16(f).

²⁸ *See*, Exhibit R-13-5. Although this note was written outside of the box where income information is requested, it is relevant to CSU's consideration because no information was provided inside the box. This is factually distinct from my holding for Student #29, *supra*, where data was provided inside the box and conflicting information was provided outside the box. Here, the meaning of the note is readily understood. Further, there is no information inside the box, so it is reasonable to infer that the student's comment was meant to be considered.

ORDER

Accordingly, for the reasons stated above, I hereby MODIFY the Initial Decision and ORDER Respondent to pay the U.S. Department of Education \$465,330.57, consistent with the determinations made herein.²⁹

So ordered this 2nd day of September 2014.



Arne Duncan

Washington, D.C.

²⁹ This reduced figure reflects FSA's determination that liabilities for two students have been eliminated. This total includes the following liabilities: \$329,568.62 in projected Pell Grant fund liabilities; \$2,130.91 in projected Pell Grant cost of funds; \$21,764.34 in projected Supplemental Educational Opportunity Grant (SEOG) liabilities; \$140.72 in projected SEOG cost of funds; \$3,320.85 in Federal Work Study (FWS) liabilities; \$21.47 in FWS cost of funds; and \$108,383.66 in projected estimated actual losses for the loan funds (from a total of \$303,832.23 in subsidized loan funds).

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