

IN THE MATTER OF CHAUFFEUR'S TRAINING SCHOOL,
Respondent.

Docket No. 92-113-SP
Student Financial Assistance Proceeding

Appearances: Keith J. Roland, Esq., of Albany, N.Y., for the Respondent.

Carol S. Bengle, Esq., of Washington, D.C.,
Office of the General Counsel, U.S. Department of Education, for the Office of Student Financial
Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

Chauffeur's Training School (CTS) is a proprietary trade school which, until September 1991, participated in the Guaranteed Student Loan (GSL) programs under Title IV of the Higher Education Act of 1965, as amended (Title IV). Such programs are administered by the Office of Student Financial Assistance Programs (SFAP), United States Department of Education (ED).

Program reviews were conducted at three CTS locations - Albany, Chicago, and Houston in December 1990 and January 1991. A final program review determination letter (FPRD), issued by SFAP's Institutional Participation and Review Branch on August 27, 1992, concluded that CTS was ineligible to participate in Title IV programs due to its failure to meet the ability-to-benefit (ATB) requirements found at 34 C.F.R. § 668.7 and 668.14. Although the ATB violation was the major finding, CTS was also cited for incomplete file verification practices, incorrect file review procedures, lack of financial aid transcripts, and failure to satisfy minimum required program hours. The FPRD sought repayment of \$28,223,842 which SFAP claims represents ED's actual losses for GSL funds CTS received during the years 1986-1990.

CTS filed a timely appeal and the case was assigned to me for resolution. On December 3, 1993, I dismissed the FPRD without prejudice on the ground that it had not been issued by the proper authority. On February 16, 1994, the Secretary determined the FPRD was issued properly and reinstated the FPRD. The case was then remanded to me for further proceedings.

Upon receipt of the Secretary's decision and remand, I took the case under advisement for a decision on the merits. CTS filed a motion seeking an evidentiary hearing and requesting that a decision be deferred pending the conclusion of such hearing. On April 15, 1994, I denied the motion because the applicable regulations do not provide for evidentiary hearings; rather, they provide for a hearing consisting of written briefs. 34 CFR § 668.116(b). I did, however, provide the opportunity for an oral argument if either party requested. Neither party made such a request.

It is SFAP's position that, as a general rule, pervasive ATB violations should result in a finding that the entire institution is ineligible to participate in the Title IV Programs, while occasional

ATB violations would only result in individual students becoming ineligible recipients of Title IV funding. Here, SFAP claims that CTS was not eligible because the alleged ATB and the other violations are numerous, pervasive, significant, and so repetitious that they affect all the institution's operations.

ISSUES

The following issues are apparent in this case: (1) whether the violations occurred and are of sufficient seriousness so as to result in the loss of institutional eligibility; (2) may SFAP determine its loss by applying a 5-year average default rate if institutional eligibility is lost and, (3) how should liability be calculated if these violations are established but are not of such a nature so as to lead to the loss of institutional eligibility.

DISCUSSION

A sample of 187 student files was selected for review by the program reviewers at the three CTS locations. A review of those files revealed the following discrepancies: 36 ATB violations, 20 incomplete verifications, 13 undocumented adjustments, 15 files lacking a financial aid transcript, 6 disbursements to ineligible students, 2 file discrepancies, and 1 program which failed to provide the minimum required hours.

Applying the number of violations against the sample size results in violation rates of 19% for ATB violations, 11% for verification problems, 7% for undocumented adjustments, 9% for missing financial transcripts, and 1% for other file discrepancies. I find that these numbers do not rise to the level of being severe, pervasive, or of overriding concern. Thus, it is highly questionable that these are the type of violations upon which to base a finding of loss of institutional eligibility.

The scope of CTS' violations is further affected by the evidence CTS submitted. CTS submitted student file records, the ATB tests administered, financial aid worksheets, and miscellaneous records to address SFAP's claims. Of the 36 ATB violations, CTS tendered evidence to refute 10; for the 20 verification problems, CTS refuted 6; for the 13 undocumented adjustments, CTS accepted full responsibility but due to double counting, the total is reduced to 12; for the 15 files lacking aid transcripts, CTS refuted 5 but, based on double counting, 9 remained; for the 6 disbursements to ineligible students, CTS refuted 3; for 2 file discrepancies, CTS refuted 1.

The one allegation to which CTS made no effective challenge involved its failure to provide 300 minimum hours in the Tractor Trailer Driver II Program at the Albany campus. To comply with the 300 hour requirement, the class schedule included a session on the July 4th holiday. CTS claims that the class was rescheduled on July 6th, but records of CTS fail to establish that such a session took place. Consequently, I find that CTS did not provide a 300 hour program in this instance and, therefore, did not offer an eligible program. See generally *In the Matter of Commercial Training Services*, Docket No. 92-128-SP, U.S. Dep't of Educ. (August 4, 1993). While determining this program was ineligible, I note it had a very small class enrollment and find it to be the exception to CTS' program practices, and not representative of a larger, systemic type violation.

After due consideration of the evidence contained in the case file, I find CTS has met its burden of proof and persuasion. Specifically, I find only the violations which are enumerated above and further delineated in the attached Appendix to be supportable by the evidence. 34 CFR § 668.116(d). See also *In the Matter of Sinclair*, Docket No. 89-21-S, U.S. Dep't of Educ. (Sept. 26, 1991).

Having found that 26 ATB violations have been established, I must then determine the legal effect of such violations. I have had the opportunity in another case to discuss the possible effects

of ATB violations. See *In the Matter of Long Beach College of*

Business, Docket No. 92-132-SP, U.S. Dep't of Educ. (July 14, 1994). Such violations could affect either institutional eligibility or individual eligibility. In Long Beach, the policy of uniformly accepting artificially low ATB scores went to the very validity of the ATB procedures it had in place and caused me to determine that institution eligibility was affected. Unlike Long Beach, CTS was not implementing an improper threshold ATB policy affecting all students or potential students, so there is not a similar kind of systemic problem presented.

Likewise, I am satisfied that the other violations, when combined with the ATB violations, do not affect institutional eligibility. I will, therefore, determine liability here based on the loss of individual student eligibility.

Calculation of Liability

ED calculated CTS's liability as \$28,223,842. After finding the violations in the files reviewed, ED gave CTS the choice of conducting a full file review to determine potential liability or having ED assess loss by applying the published cohort default rate against all Title IV aid that CTS received during the period. CTS chose not to do the file review and, as a result, ED calculated the loss on the alternative basis utilizing the 5-year average default rate of 54.4%. This would have been a reasonable method to quantify loss if it had been determined that CTS was ineligible during the period in question. See *In the Matter of Southeastern University*, Docket No. 93-61-SA, U.S. Dep't of Educ. (June 22, 1994) and *In the Matter of Commercial Training Services*, Docket No. 92-128-SP, U.S. Dep't of Educ. (August 4, 1993). However, I find otherwise.

The more appropriate process to determine actual losses is to project the violations within the representative sample to the universe of students. See *In the Matter of Hi-Tech Institute of Hair Design*, Docket No. 92-129-SA, U.S. Dep't of Educ. (July 14, 1994). Here, the representative sample is 187 students. This constitutes 10% of the student population of the three identified campuses. Therefore, in order to project ED's actual losses the sample liability need only be multiplied by a factor of 10.

The liability within the sample used is \$205,660. This breaks down to \$87,758 for ATB violations; \$23,421 for files which were incorrectly verified; \$22,312 for files which were missing required financial aid transcripts; \$19,703 for funds disbursed to students not currently enrolled; and \$52,466 for undocumented adjustments to estimated family contributions. See

Appendix. The sample liability is then multiplied by 10, resulting in liability for these violations of \$2,056,600.

The remaining violation is for the ineligible program which did not meet minimum required hours. This was one program and affected only eight students. Based upon an average loan amount of \$3,551, as calculated from the sample of loan amounts at the Albany campus where the program was offered, the resulting liability is \$28,408.

CTS' total liability for the violations resulting from the program reviews is \$2,085,008.

FINDINGS

I FIND the following:

The violations of Title IV program regulations were not sufficiently serious to reach the level of loss of institutional eligibility.

SFAP may recover actual losses by extending the statistical sample to the universe of students.

Liability calculated in this manner is \$2,056,600.

Liability for the minimum hour program violation is \$28,408.

Respondent's total liability amounts to \$2,085,008.

ORDER

On the basis of the foregoing, it is hereby--

ORDERED, that Chauffeur's Training School repay to the United States Department of Education the sum of \$2,085,008.

Ernest C. Canellos

Issued: September 9, 1994
Washington, D.C.