

IN THE MATTER OF SMITH BUSINESS COLLEGE,
Respondent.

Docket No. 92-45-SP
Student Financial Assistance Proceeding

DECISION

The Department of Education (ED) issued a Partial Final Program Review Determination (PFPRD) dated January 31, 1992 containing three separate findings of liability by Smith Business School. Under the findings Smith owes ED \$56,384.00, consisting of \$4,378.00 (Finding Number 13); \$3,737.25 (Finding Number 19); and \$48,268.75 (Finding Number 20).

Because of the PFPRD findings, Smith filed a request for a hearing on the record under 34 CFR Part 668 subpart H. The matter was assigned to Judge Allan C. Lewis who reassigned the matter to me. Written arguments and evidence contained in briefs were filed by ED's Office of Student Financial Assistance (OSFA) and by Smith.

The three disputed findings are documented in the PFPRD and also in a DE Program Review Report which was sent to Smith on August 21, 1991.

In the case of finding 13, Smith awarded Pell Grant funds during 1990-91 to two students whose income tax returns may or may not establish that they met the income need test for Pell Grants.

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Apparently, the need analyses for the students were not fully completed.

Another student also possibly failed during 1989-90 to meet the need test for a Supplemental Educational Opportunity Grant (SEOG), this time because an income tax return of a parent of the student may void the basis for an SEOG. The amounts paid to the possibly ineligible students under finding 13 total \$4,378. Smith disputes the amount, saying it should be only \$250. See Appendix 7 of the Smith Response To Opening Brief dated May 21, 1992.

In its reply brief dated June 22, 1992, OSFA ignores Appendix 7 of the Smith brief.

It may be that the core position of OSFA is that Appendix 7 is "late," in violation of 34 CFR 688.113(b), which requires among other things that certain school records be submitted no later than the date that the school receives the final program review determination. Here there was a partial final determination dated January 31, 1992, and Appendix 7 may not have been submitted to DE until the May 21, 1992 brief of Smith.

Alternatively, the position of OSFA may be that Appendix 7 is not exculpatory because the tax returns contained in Exhibit 7, even though fully examined by DE during the program review were not at that time fully "verified" by Smith as may be required by DE regulations. Finally, it may be the OSFA position that even "verified" tax returns would not have supported grants to the three

students. -

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In the case of finding 19, Smith failed to deposit required matching funds for SEOG funds during 1989-90 and 1990-91 amounting \$3,737.75. At page 4 of its brief of May 21, 1992, Smith admits liability under finding 19.

In the case of finding 20, Smith failed to give priority during 1989-90 and 1990-91 to Pell Grant students. All students in a sample selected by DE who received Pell funds were denied SEOG funds while other non-Pell students, with lesser priority, were given SEOG funds. Smith says that any such use of grant funds is justified by an overall shortage of SEOG funds. Smith also says that it failed to expend some of its Pell funds and that the unexpended amount should be subtracted from the SEOG total. However, based upon the samples studied by DE it appears that Smith uniformly denied SEOG funds to all Pell Grant students and that in the face of such denial, no disbursement of SEOG funds to students with lesser priority was warranted. Of course, a larger sampling of Pell Grant students might show a somewhat different result, but based on the record, no Pell Grant student is shown to

have received SEOG funds. Thus, the requirement for a refund by Smith of all SEOG funds for the subject school years is appropriate.

Upon the evidence and argument presented, I find that the Partial Final Program Review Determination dated January 31, 1992 is supported by the record. The position of OSFA on finding 13 might be better documented, but Smith itself fails to prove that finding 13 is flawed.

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Specifically, I find deficiencies by Smith as follows:

Finding 13 - The student need analyses for two Pell grants and one SEOG award were not fully completed by Smith.

Finding 19 - Smith failed to provide matching funds for SEOG funds;

Finding 20 - Smith refused to provide SEOG funds to Pell Grant students.

Because of these deficiencies, Findings 13, 19 and 20 of the PFPRD date January 31, 1992 are affirmed.

Dated this 25th day of September, 1992.

Paul S. Cross
Administrative Law Judge
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U.S. Department of Education
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