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

In the Matter of **Docket No. 93-106-SP**

CLARK ATLANTA UNIVERSITY, Student Financial Assistance Proceeding

Respondent. PRCN: 90104028

Appearances: William A. Blakey, Esq., Clohan & Dean, Washington, D.C., for Clark Atlanta University.

Steven Z. Finley, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

On July 13, 1993, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a **final program review determination** (FPRD) finding that during the 1987-88 and 1988-89 award years Clark Atlanta University (CAU) violated several regulations promulgated pursuant to Title IV of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq*. By letter, dated August 26, 1993, CAU filed a timely appeal of the FPRD. This case was initially assigned to Administrative Law Judge Paul J. Clerman, however, as a result of the illness of Judge Clerman, this case was reassigned to me.

Clark Atlanta University is an institution of higher education located in Atlanta, Georgia. The institution was formed in 1989 as a result of a merger between two historically black institutions -- Clark College, an undergraduate liberal arts college, and Atlanta University, an institution that offered only graduate-level programs. On December 11-15, 1989, SFAP's program reviewers from the Department's Regional Institution Review Branch located in

Atlanta, Georgia conducted a program review of Atlanta University's Federally funded student financial aid programs. The program review included a review of a sample of 31 student files for which Title IV financial assistance was awarded to students during the 1987-88 and 1988-89 award years. On June 25, 1990, SFAP issued a program review report that contained 20 findings concluding that CAU was in noncompliance with Title IV regulations. Six of the findings from the program review were not resolved by SFAP and CAU and, as a result, became the basis of

the final program review determination requiring the institution to repay ED Title IV program liabilities totaling $759,216.55.

In this proceeding, CAU's request for review of the FPRD is limited to Finding #5. See footnote 1 *1* Under Finding #5, SFAP argues that CAU, in violation of 34 C.F.R. § 668.7(a)(7), improperly disbursed Title IV funds to students who had already defaulted on repayment of a Title IV loan, yet had not presented documentation to the institution that the defaulted loans had been repaid or were in satisfactory repayment. Therefore, the only disputed issue before me is whether CAU disbursed Title IV funds to ineligible students in contravention of Section 668.7(a)(7).

According to SFAP, the Department's program reviewers discovered that 2 of the 31 student files examined revealed that CAU had made Title IV funds available to 2 students who were in default on Title IV loans received from other institutions. On this basis, SFAP instructed CAU to review the files of all students enrolled during the 1987-88 and 1988-89 award years to identify whether other students, who were in default, had been improperly awarded Title IV funds. CAU examined its own records and identified students who had received Title IV funds, but were in default on a previously obtained Title IV loan. SFAP's review of this information resulted in its conclusion, under Finding #5 of the FPRD, that CAU improperly disbursed Title IV funds to its students during the 1987-88 and 1988-89 award years and, as a result, owes liabilities of $91,395.55 in Federal work-study funds, $81, 848.00 in Federal Perkins loan funds, and $411,183.00 in estimated losses for improper disbursements of Federal guaranteed student loan funds. When added to the liabilities which CAU does not dispute, the total amount sought by SFAP in this proceeding is $759,216.55.

Under Title IV program regulations, institutions eligible to receive Title IV funds may disburse those funds only to students who are eligible to receive student financial assistance under Title IV. In that regard, 34 C.F.R. § 668.7(a)(7) prescribes that a student is eligible for financial assistance under Title IV if, *inter alia*, the student is not in default, and certifies that he or she is not in default, on any loan made under Title IV. In addition, a student who is in default on a Title

IV loan may still be considered eligible to participate in Title IV programs if the student presents the institution with documentation showing that the defaulted loan either has been paid in full or that the student has made satisfactory arrangements to repay the loan. See footnote 2 *2*

CAU argues that as a result of a series of amendments to Title IV over the course of the period at issue, institutions were unaware of what type of documentation was required to maintain compliance with Title IV's record keeping requirements. In this respect, CAU contends that although Title IV undisputedly required institutions to obtain documentation to verify a student's Title IV eligibility, the type of documentation required was so ill-defined by statute and regulation that CAU, in its former form, was hindered in its ability to obtain more appropriate documentation. In support of its position, CAU contends that a preliminary file reconstruction conducted by the institution demonstrated that at least 39 student files contained what could be deemed proper documentation which supported the institution's determination that its students were eligible for Title IV assistance.

In its opening brief, submitted to the tribunal on February 7, 1994, CAU contended that "within the next two weeks" a file reconstruction would be completed. In CAU's February 14, 1994 submission,See footnote 3 *3* the institution requested that it be granted leave to file documentary evidence supporting its position notwithstanding the fact that under 34 C.F.R. §§ 668.113(b) and 668.116(e)(2) the time for filing documentary evidence had expired.See footnote 4 *4* In the interest of fairness and equity, and in light of CAU's contention that it had reconstructed its files covering the years at issue, on October 31, 1994, I granted CAU leave to submit evidence supporting its position.See footnote 5 *5* My order required CAU to file its submission on or before November 10, 1994. To date, CAU has not submitted any evidence supporting its position. Accordingly, irrespective of the merits of

CAU's legal arguments, I must find that the institution cannot prevail in this proceeding because CAU has failed to meet its burden of proof.See footnote 6 *6*

Nor am I persuaded by CAU's legal argument. Despite the fact that Title IV has undergone several amendments, the statutory provision precluding disbursement of Title IV funds to students who default on a student loan has remained unchanged. The HEA, under Section 484(a), prohibits students from receiving Title IV loans if they are in default on any Title IV loan disbursed by any postsecondary institution unless the defaulted loan was repaid or is in satisfactory repayment. *See,* § 484(a), 20 U.S.C. § 1091(a). Similarly, Title IV regulations throughout the period at issue prohibit institutions from disbursing Title IV funds to students once it receive a financial aid transcript which indicates that the student is in default on any Title IV loan. *See, e.g.,* 34 C.F.R. § 668.19 (1990). Section 668.19 is abundantly clear that an institution that certifies a Title IV loan application *must* return to the lender any funds it disburses to the student if the institution receives a financial aid transcript indicating that the student defaulted on a Title IV loan. In addition, the unambiguous language of Section 668.19 prohibits institutions from disbursing more than one Pell Grant payment to students if institutions do not obtain appropriate financial aid transcripts.

More important, to the extent that CAU contends that despite the clear language of the regulations referred to *supra*, the statute was nonetheless unclear whether institutions were only prohibited from improperly "certifying" student loan applications or were actually prohibited from improperly "certifying" or "disbursing" loan funds to students, this is a distinction without a difference under the circumstances of this case. Simply stated, CAU did not submit *any* evidence to this tribunal accounting for its disbursement of Title IV funds. Consequently, there is no evidence in the record for me to review to determine whether the distinction it now offers as pertinent to its position is actually relevant to its administration of the Title IV program during the 1987-88 or 1988-89 award years. Unmistakably, in a proceeding adjudicating the merits of SFAP's determination that an institution owes the Federal government a substantial amount of money, if the institution had not actually disbursed the funds at issue, but, instead, had merely certified that its students were eligible for Title IV assistance, the record would be abounding with evidence showing that the institution had not disbursed Federal funds contrary to Title IV

requirements. Here, this is not the case. The institution introduced no evidence supporting its position.

After a review of the FPRD, I am convinced that the findings contained therein sufficiently state allegations in a manner that would require CAU to carry its burden of proof. In that regard, I find that CAU failed to carry its burden of proof in establishing that the institution did not disburse Title IV funds to ineligible students or that the institution's expenditures of Title IV funds were otherwise proper.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Clark Atlanta University pay to the United States Department of Education the sum of $759,216.55.

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Judge Ernest C. Canellos

Chief Judge

Dated: December 11, 1995

SERVICE

A copy of the attached document was sent to the following:

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Footnote: 1 *1 CAU does not dispute SFAP's determination that the institution owes a liability to the Department under Findings #1 -- $68,978 -- (undocumented adjustments to expected family contribution), #3 -- $38,776 -- (financial assistance provided in excess of need), #6 -- $41,117 -- (funds disbursed in absence of a need analysis), #7 -- liability amount already identified under Finding 3 -- (inappropriate use of need analysis), and #8 -- $25,919 -- (funds disbursed in absence of verification of financial aid application).*

Footnote: 2 *2 In this respect, under Title IV loan programs, unless the institution has information to the contrary, the school may satisfy its obligation to determine whether a student is eligible to borrow a loan by relying on the borrower's or the student's written statement that he or she is not in default. 34 C.F.R. § 682.201(e)(3) 1990.*

Footnote: 3 *3 In an order dated January 19, 1994, Judge Clerman required both parties to file their final submissions by February 14, 1994.*

Footnote: 4 *4 Apparently, CAU was unable to file its evidentiary submissions along with its opening brief because the institution's student files were misplaced or otherwise unavailable to counsel as a result of the merger of Clark College with Atlanta University.*

Footnote: 5 *5 In In the Matter of Baytown Technical School, Dkt. No. 91-40-SP, U.S. Dep't of Education (April 12, 1994), the Secretary held that despite the very specific requirements of 34 C.F.R. §§ 668.113(b) and 668.116(e)(2), the judge may permit an institution to file exhibits after the filing time requirements of sections 668.113(b) and 668.116(e)(2) have expired.*

Footnote: 6 *6 It is well established that in Subpart H -- audit and program review -- proceedings, the institution has the burden of proof. 34 C.F.R. § 668.116(d). Consequently, to sustain its burden the institution must establish, by a preponderance of the evidence, that Title IV funds were lawfully disbursed. See In re National Training, Inc., Dkt. No. 93-98-SA, U.S. Dep't of Educ. (October 18, 1995). It is abundantly clear that under the circumstances of this case, the institution has not met its burden. Indeed, CAU not only failed to rebut SFAP's presentation showing that the institution disbursed Title IV funds to students who had defaulted on student loans, but also failed to submit any evidentiary accounting of the school's expenditure of Title IV funds for the period at issue.*