

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

In the Matter of

California Culinary Academy, Inc.,
San Francisco, CA,

Respondent.

Student Financial Assistance Proceeding

Docket No. 93-155-SP

Appearances:

James S. Clapp, General Counsel, California Culinary Academy, San Francisco, CA, for
Respondent.

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

Before:

Frank K. Krueger, Jr., Administrative Judge.

DECISION

ISSUE

Whether the Respondent violated 34 C.F.R. § 675.21(b) of the regulations implementing the College Work Study Program by employing participating students in jobs which did not "furnish student services."

INTRODUCTION

Respondent is a private, for-profit postsecondary institution offering an Associate of Occupational Studies Degree in Culinary Arts, and a one-year Certificate in Baking and Pastry Arts. The Respondent currently enrolls more than 700 full-time students who receive classroom instruction and hands-on training in kitchens and dining rooms. Students are trained in cooking and in the operation of a food service business. Respondent began participation in the Work Study program in July 1989. The period covered by the program review was fiscal years 1989 and 1990.

In 1991, the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), conducted a program review Concerning Respondent's participation in the College Work Study Program. SFAP made a number of findings, all of which were resolved except the issue articulated above. SFAP found that for fifteen job categories, the Respondent

was in violation of 34 C.F.R. § 675.21(b), since the job categories in question did not involve the furnishing of services to students.

Based upon the initial findings by SFAP, the Respondent examined the positions in question, determined that a number of job functions did not involve services to students, and sent ED a check for \$15,815. Respondent also sent ED an analysis supporting its contention that the remaining costs questioned by SFAP were allowable. In its final program determination, SFAP revised its liability calculations to find that three positions were totally eligible for Work Study Funds (clerical positions in the Placement Office, Library, and the Financial Aid Department) and that two positions were partially eligible (clerical positions in the President's Office and Dean's Office), but that the remaining positions were totally ineligible, for a remaining liability of \$57,420. However, SFAP made no effort to specifically rebut Respondent's contention that most of the specific functions described in the position descriptions for the jobs at issue were eligible for payment by the Work Study Program.

For the reasons provided below, the undersigned concludes that the Respondent is not in violation of the applicable regulations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Applicable Regulations and Guidelines.

In its Final Program Review Determination Letter, SFAP cited the Respondent for violation of 34 C.F.R. § 675.21(b) of the regulations concerning the College Work Study Program. SFAP articulated the violation, on page 4, as follows:

The school used Federal Work Study funds to compensate students who performed work which was operational in nature and was related directly to the maintenance and operation of the school, rather than in the provision of direct student services. Working as waitpersons in the school's restaurants and bars, working as administrative assistants in the school's administrative offices, assisting teachers and administrators, etc. are necessary for the operation of the institution itself and generally do not provide direct and personal services to students, and are therefore not considered student services. [Emphasis added.]

This characterization of a violation is erroneous. There are no provisions in the regulations which require that services be provided to students which are "direct" and "personal," or that "operational" functions are proscribed. SFAP makes no effort to define "operational" services. It is very difficult to be employed by a school, especially if working directly with students, without providing operational services, since serving students is a school's operation.

The regulations at issue provide as follows:

A proprietary institution may employ a student only in jobs that --

- (1) Are on campus;
- (2) Furnish student services;

- (3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and
- (4) Do not involve the solicitation of potential students to enroll at the proprietary institution. [Emphasis added.]

There is no dispute between the parties concerning any of these requirements, except the requirement that the work performed "furnish student services." The regulations applicable to the period of time covered by the program review do not define "furnishing student services." [1](#) Thus, it is allowable that jobs funded by the Work Study Program be "operational," and not "personal," so long as they furnish student services. In its Initial Brief, SFAP cites the following language of the Federal Student Financial Aid Handbook as providing guidance as to the meaning of "student services":

In general, work that would primarily benefit the school rather than its students is not permissible. [Emphasis added.]

Unfortunately, the Handbook begs, rather than answers, the question in this case. When one examines the functions of the jobs at issue in this case, one cannot conclude that they "primarily" benefit the school rather than the students. In addition, the quoted sentence in the Handbook is ambiguous, in that it is not clear as to which students it is referring -- the students employed in the Work Study Program Or the student body as a whole. To the extent that most of the jobs at issue related to the purchase, preparation, and service of food and beverages, the jobs primarily benefited the student employees, as the jobs gave them hands-on experience in doing what they learned in the classroom. To the extent that the jobs involved preparing and serving food to the student body, they benefited the student body. In addition, as described below, three of the jobs at issue involved assisting students in the President's Office, the Dean's Office, and the Continuing Education Office, thus, again benefiting the student body as a whole. And, the use of the introductory phrase "in general," makes it clear that the primary benefit criterion is not absolute. When the sentence from the Handbook quoted by SFAP is read in context, it appears that the types of work which would directly benefit the school are such overhead items as facility maintenance, cleaning, and security. [2](#)

B. Individual Jobs at Issue. [3](#)

After consideration of the individual duties for each job here in question, the hearing official finds that most of the duties described can be considered "furnishing student services," and the few duties that may be considered as providing services primarily to the school are incidental to the other functions.

· Clerical -- Student Services, Dean's Office.

SFAP found that 55% of this job was ineligible for Work Study Funds. Respondent contends that 100% of the job was eligible. [4](#) This job involved the distribution of student uniforms and supplies required for classes; preparation of student identification cards, including taking student photos, and distributing the cards; maintaining student bulletin boards; scheduling student appointments with various school administrators; assisting students in class registration; assisting

in the assignment of student lockers; assisting with preparations for graduations, including graduation file review, organizing graduation uniforms, and assembling diplomas; assisting students in the preparation of various forms, including transcript requests, and housing forms. All of these job functions involved the student employee working either directly with students, or working on forms or documents for the students. There were a few functions, such as typing letters for the Dean and filing documents, that could be considered institutional overhead. but in the overall scheme of this job, those tasks appear minimal and incidental. Thus, the hearing official finds that 100% of this job was eligible for participation in the Work Study Program.

· Clerical -- President's Office.

SFAP determined that 65% of this job involved activities other than service to students. Respondent contends that only 10% involved such activities. After examining the position description in question, the hearing official accepts Respondent's determination as correct. This job involved some unspecified typing. But most functions involved working directly with, or for, students. The job included the typing of the student newsletter, typing curriculum outlines and course syllabi, and duplicating and distribution of these syllabi; typing and distribution of student questionnaires; and typing letters to prospective employers of students and graduates.

· Clerical -- Continuing Education.

SFAP determined that 100% of this job was ineligible, while Respondent contends that 100% was eligible. This job involved the typing and distribution of course offerings to the classrooms, and taking class reservations. The job also involved some duty answering phones. The latter responsibility was negligible, and the former responsibilities were clearly the provision of services to students. Thus, 100% of this job was eligible for participation in the Work Study Program.

· Cyril's Wait Staff.

This job involved serving lunches to students in the Respondent's restaurant, which SFAP determined to be 100% ineligible. Since the job was waiting on students, it was providing services to students, and was 100% eligible.

· Grill Cook, Wait Staff, and Bartender.

The Respondent operates a Grill, in which it provides a student union atmosphere where students and outside customers can purchase food and beverages after evening classes. The cook prepared the food, the bartender prepared and served beverages, and the wait staff served food and beverages. To the extent that the Grill serves outside customers, Respondent, in response to the initial program review determination, voluntarily decided that 40% of these jobs involved activity not authorized by the regulations. SFAP determined that 100% of these jobs were ineligible. The hearing official accepts Respondent's determinations, and finds that all of the functions of these jobs were authorized, except those of serving the public, since they involved providing services to students. The hearing official further finds that 40% is a reasonable estimate of the amount of time spent serving the public.

· Retail Cook and Retail Clerk.

The Respondent operates a retail shop for students and outside customers for the purchase of coffee, juice, pastries, luncheon salads and sandwiches, classroom supplies, and uniform accessories. The cook prepared the food sold, and the clerk displayed the items for sale and waited on customers. Again the Respondent voluntarily disallowed 40% of the activities of these employees as not authorized by the regulations. SFAP contends that 100% of these jobs were ineligible. The hearing official accepts Respondent's determination, and holds that all of the functions were authorized, except those of serving the public, and that 40 % is a reasonable estimate of the amount of time spend serving the public.

· Careme Room Wait Staff and Bartender.

The Respondent runs a dining room which is open to students and the public. The wait staff served food. while the bartender tended the bar. The duties involved putting into action what the students learned in their four required Table Serving classes. Because the restaurant serves the public. Respondent voluntarily refunded costs associated with 20% of these positions. SFAP contends that 100% of these jobs were ineligible. The hearing official accepts the Respondent's determinations, and finds all of the duties authorized, except those involved with serving the public, and that 20% is a reasonable estimate of the time spent serving the public.

· Purchasing Clerk and Wine Steward

These two positions involved working with the Food and Beverage Education Department, in purchasing, storing, and distributing food and beverages necessary for the Respondent to run its classes and restaurants. SFAP contends that 100% of these positions were not allowable because they are "operational" or overhead. As the regulations do not proscribe operational or overhead activities, the hearing official finds that these positions were eligible to participate in the Work Study Program, and that the costs were allowable as the jobs involved the provision of services to students.

Thus, Respondent was in full compliance with 34 C.F.R. § 675.21(b), and has no further liability to ED.

Frank K. Krueger, Jr.
Administrative Judge

Issued: June 7, 1995.
Washington, D.C.

SERVICE

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED**, to the following:

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1 The regulations were subsequently amended to define "student services" as follows:

Student Services: Services that are offered to students that are directly related to the work study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance, counseling and social, health, and tutorial services.

34 C.F.R. § 675.2(b) (*italics in original*). To the extent that there is no proscription in this definition of services which are not "direct and personal" to students, and that most of the jobs at issue in this appeal relate directly to the students training in food purchasing, preparation, and service this definition strengthens Respondent's contention that most of the costs questioned by SFAP are allowable.

2 The paragraph in which the sentence is taken reads as follows:

Such jobs [fulfilling the criteria specified in 34 C.F.R. § 675.21(b)] as peer counselor, tutor, or library aid would be appropriate. Work in the financial aid administrator's office or guidance office is permissible, but work in the admissions or recruitment area would not be acceptable, since this employment could involve soliciting potential students. Maintenance (cleaning dorms) would not be acceptable. Some types of security work are allowed, such as escorting students to their cars at night, or escorting handicapped students, but work as a night watchman is not. In general, work that would primarily benefit the school rather than its students is not permissible. For example, a student could not work in the front reception area or in the business office of a school, since those jobs would not provide student services.

3 Concerning all of the jobs at issue, SFAP argues that Respondent failed to meet its burden of proof. See 34 C.F.R. § 668.116(d). To the contrary, Respondent has met its burden of proof. In response to the initial program determination, Respondent submitted a detailed description of each job at issue, along with its estimate of the percentage of each job which involved furnishing services to students. In response, SFAP made a final determination of the estimated amount of time each job involved service to students, but articulated no reasons to support its conclusions. Thus, Respondent met its initial burden of coming forward with information to establish that the costs questioned by SFAP were proper, shifting the burden of coming forward with rebuttal

evidence to SFAP. Since SFAP has not come forward with any additional evidence, the Respondent met its burden of proof.

4 Since Respondent's estimates are based on first-hand knowledge of the jobs at issue, and SFAP did not articulate any factual reasons for its estimates, except to reiterate its unsupported position that the job functions are "operational" the undersigned consistently gave more weight to Respondent's estimates than he gave to SFAP's.