

IN THE MATTER OF FORT SCOTT COMMUNITY COLLEGE,  
Respondent.

Docket No. 93-156-SP  
Student Financial Assistance Proceeding

## DECISION

Fort Scott Community College (Fort Scott) appeals certain Department of Education (ED) findings concerning a certificate course for which Federal Pell Grant Funds were distributed to students under Title 20 U.S.C. § 1070 et seq.

On October 6, 1993, the Institutional Review Branch (IRB) of ED issued a final program review determination (FPRD) finding that a transportation course did not meet the minimum credit requirements for inclusion in the Pell Grant program. IRB seeks to recoup \$825,809 in Pell funds disbursed by Fort Scott as an "inedible" program.

Pursuant to 34 C.F.R. § 668.113, Fort Scott appeals the FPRD finding. The Student Financial Assistance Programs (SFAP) opposes the appeal.

## STATEMENT OF THE FACTS

Fort Scott is a public two-year community college offering training leading to Associate Degrees in Arts, Science, and Applied Science. In addition, the school offers training leading to certificates in a variety of fields such as cosmetology, information processing, and transportation. All courses at the school are offered in credit hours. The school offers classes at a variety of extension facilities throughout the State. Fort Scott is accredited by the North Central Association of Colleges and Secondary Schools (NCA) and is licensed by the Kansas State Department of Education (Kansas).

Fort Scott's transportation program, which is at issue in this case, trains students in commercial truck driving. The program consists of two classes, Transportation I and Transportation II. Between 1979 and 1984, the transportation course was a 16 credit hour program. However, between 1984 and 1991, students completing these two courses received only 12 to 15 credits and were awarded a truck driving certificate at the completion of the program. Presently (since 1991), the course is for 16 credits. The course consumed 240 hours in a 6-week period, with a 5-day week and 8-hour day. Subsequent to the audit years, 30 more hours were added to the course. Except for the 30 hour addition in 1991, the course remains unchanged since 1979 when it was a 16 credit hour course. Under Kansas law, 240 hours of classes equals 16 credits.

IRB conducted a program review at Fort Scott between April 13 and 16, 1992, to examine the school's administration of the Title IV programs for award years July 1, 1990, to June 30, 1992. On July 23, 1992, IRB issued a program report citing several areas of non-compliance with pertinent statutes and regulations.

Based on the findings in the Program report, Fort Scott took corrective actions necessary to resolve 7 of the findings. On October 6, 1993, IRB issued a final determination outlining 4 remaining asserted violations in Findings 1, 2, 4 and 10. Monetary liabilities were assessed for Findings 1 and 2.

On appeal, Fort Scott is contesting only Finding 1. In that finding, IRB concluded that during the period from 1984-1991, Fort Scott provided not more than 15 credit hours for its transportation program, which was less than the minimum of 16 required for inclusion in the Federal Pell Grant Program. Based on this conclusion, IRB directed the School to reconstruct its files to determine how many students were awarded Pell Grants for the "ineligible" program during that time period. The school produced information for only the award years between 1987-1991. Records for the years between 1984 and 1986 were beyond the record retention requirements of the regulations and records were not available. Based on the reconstruction, IRB determined that Fort Scott awarded \$821,809 to students in an ineligible program. IRB directed the school to refund that money to ED.

In this appeal, Fort Scott has the burden of proving that it properly administered the program requirements. However, the FPRD itself must establish a basis for requiring Fort Scott to reimburse ED.

In this instance the FPRD is materially deficient. Counsel for SFAP seeks to repair the deficient FPRD (See footnote 9 of the Brief of SFAP). As will be explained, this tardy effort by counsel for SFAP to embellish a deficient FPRD must be rejected.

Fort Scott's school's academic catalogue at a time pertinent indicates that the truck driving program allows students to earn as little as 12 hours of college credit. During the period in question, the school varied the credit hours awarded for the program from 12 to 15. The school sought to keep the cost of the instruction at an affordable price. Sixteen hours costs more than 12 or 14 hours. Kansas is well served by a commercial truck driving program which meets the educational needs of the surrounding region and attracts large number of students. As well, allowable Pell grants were kept at a lower amount by Fort Scott.

The Federal Pell Grant Program provides grants to assist financially needy students in meeting the cost of their postsecondary education. In order to receive a grant under this program, a student must meet ED eligibility requirements. In addition, HEA funds can only be awarded where the student is enrolled in an eligible program.

An eligible program for a post-secondary vocational program must be at least 16 credit hours in length at an institution using semester credit hours to measure academic progress. 34 C.F.R. § 600.2.

During the period in question, Fort Scott's transportation program was said to be only 12 to 15 credits. However, under Kansas law the program is equal to 16 credits. Also, prior to 1984, the course was for 16 credits, and since 1991, it has been a 16 credit course. Further, except for a recent addition of 30 hours, the course is unchanged since 1979. The FPRD totally ignores these facts.

In its brief, Fort Scott argues that the transportation program qualifies as an eligible program for purposes of the Pell Grant Program. In support, the college makes three major legal claims. First, under the formula established by Kansas law, the instructional hours contained in the transportation program equal the minimum 16 semester credits necessary for Pell grants, and therefore, it is an eligible program. Second, its accrediting agency NCA approved the course length of the transportation program, and that also is sufficient to establish the course as an eligible program. Last, the college argues that the program can lead to an associate degree, and therefore, meets an independent criteria for eligibility under 34 C.F.R. § 668.8(a)(2)(i). The school also raises an equity argument.

In regard to the first legal argument, respondent points out that it is the State's responsibility to determine the credit hours of a post-secondary program, and that the Department should defer to the State's credit hour conclusions in that area. Respondent notes that ED is prohibited from interfering with a State's calculations of instructional hours and credits.

Counsel for SFAP seeks to provide additional factual underpinning. Counsel, at footnote 9 of the brief of SFAP, states that it is not clear that the transportation program would be eligible if the State's conversion of instruction to credit hours is a controlling factor in the case. As to Respondent's submission of evidence that 240 hours of instruction equal 16 credits, SFAP counsel says that there is no indication how this compares with standards which recognize 2 hours outside "prep" time for every in class instruction hour when determining the appropriate credits awarded for a course. See 58 Fed Reg 39618, 39621-22 (July 23, 1993). This standard is said to be an important factor for the Department to consider when determining whether the quantity of a particular course is equivalent to the minimum credits necessary for participation in the Title IV programs. Under such a standard, the truck driving program would not meet the outside prep requirements for approval as 16 credits. Of course the truck driving programs is a "hands-on" course. Two-hours "prep" time for every hour of class time makes little sense for such a course. It, thus, appears that counsel seeks to provide testimony herein to the effect that Kansas law concerning credit hours is a nullity. In my opinion the matter is too complex to be decided on the basis of a simplistic footnote of counsel.

I find that the matter should be remanded to IRB to consider the effect of Kansas law upon Finding 1 of the FPRD, especially in light of the fact that the transportation course is essentially unchanged since 1979 when it was, as it is today, a 16-hour course.

Fort Scott's second argument regarding NCA's approval of the length of the transportation program must be rejected. There is nothing in the record which establishes that NCA specifically reviewed the transportation program and certified that under its standards the program was equal in course content and workload to a 16 credit program.

Respondent's last argument focuses on a different criteria than those discussed above. The College claims that the transportation program could be deemed to be eligible because it can lead to an associate degree, and therefore, meets ED requirements. Fort Scott's argument fails to recognize that in defining an "eligible program", ED classifies the various types of educational

programs available to students, which range from bachelor and associate degrees to certificate training programs. There are separate requirements for each of five distinct types of programs.

The evidence clearly establishes that the transportation program is operated as a certificate program. The fact that the truck driving credits can be transferred into a separate associate degree program that may be eligible for Pell funds does not make the transportation program itself an eligible program.

Fort Scott also argues that even if a technical violation of the regulations occurred, equitable principles prevent the assessment of liabilities in this case. Fort Scott argues that there was no harm to the Federal Government because by providing fewer credits than the instruction hours support, less Pell funds were distributed to the students.

However, the focus here is whether the school met ED requirements, not whether it had a reasonable basis for not complying with them.

Fort Scott's misplaced reliance on equitable offset cases cited in its brief. Those cases deal with situations where States violated the provisions of Federal programs, but the liabilities to the Department were lowered because the State was able to show that it also used State money for activities otherwise chargeable to the Federal government.

In addition, contrary to the college's suggestion, there appears to have been no court case reviewing final Education student assistance liability determinations in which the court injected "the doctrine of fairness" in evaluating that final determination. In contrast, there have been three United States District Court decisions in which institutions have challenged a final Ed liability determination upon equity grounds. In all three cases, the courts affirmed the liability determinations.

Platt College of Commerce, Inc. v. Cavazos, Civil Action No. 89-2376 (D.D.C. 1992) Miss Connie Kershaw's Beauty Academy, Inc. v. Cavazos, Civil Action No. 6-4-92 (E.D. PA 1992); French Fashion Academy v. Cavazos, Civil Action No. 90-6645 (S.D.N.Y. 1991). In the last cited case, ED rigidly enforced the law of the State of New York State as to course requirements so as to void school eligibility to participate in ED programs. The latter court decision is appended hereto.

Plainly, ED cannot have a double standard, one of exactly enforcing New York state law in one instance and ignoring Kansas state law in another.

All things considered, the FPRD is remanded to IRD for findings upon the omitted matter, that is the exact effect of the law of the State of Kansas concerning credit hours.

Dated this 17th day of March, 1994.

Paul S. Cross  
Administrative Law Judge  
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