UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

IN THE MATTER OF
BLAIR JUNIOR COLLEGE,

Respondent

Docket No. 93-23-SP

Student Financial Assistance Proceedings

DECISION

This is an appeal of a final program review determination (FPRD) dated December 29, 1992. The FPRD finds that Respondent Blair Junior College is a term school and must reimburse the Department of Education a total of $1,004,954 for Title IV funds disbursed to students who failed to complete their programs of education at Blair. At the time in question, Blair was a non-term school and the FPRD finding must be set aside. in this regard, a decision of the Secretary of Education in Docket No. 93-7-SP, In re Edmondson Junior College, decided April 5, 1994, a decision of an Administrative Judge in the same matter, dated June 4, 1993, and a brief of Blair in the instant matter dated November 1, 1993, all require that the FPRD be summarily reversed. The brief of Blair, which I adopt, is attached hereto as an appendix.

The FPRD dated December 29, 1992 is set aside.

Dated this 1st day of June, 1994.

Paul S. Cross
Administrative Law Judge
Office of Higher Education Appeals
U.S. Department of Education
400 Maryland Avenue, S.W
Washington, D.C. 20202-3644

SERVICE LIST

Howard D. Sorensen
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110

Leslie H. Wiesenfelder, Esq.
Dow, Lohnes & Albertson

1255 Twenty-Third Street, NW
Washington, D.C. 20037

APPENDIX

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C.

IN THE MATTER OF
BLAIR JUNIOR COLLEGE

Docket No. 93-23-BP

Student Financial Assistance Proceeding

BRIEF AND EXHIBITS OF BLAIR JUNIOR COLLEGE

Leslie H. Wiesenfelder
Dow, Lohnes & Albertson
Suite 500
1255 Twenty-Third Street, N.W.
Washington, D.C. 20037
202-857-2726

Counsel for Blair Junior College

Dated: November 1, 1993

Table Of Contents

Blair Junior College (the "College" or "Blair") submits its Brief in support of its request for review of the December 29, 1992 Final Program Review Determination ("FPRD"), Program Review Control Number 90208026, issued by Mr. Harry C. Shriver, Jr., Chief, Institutional Review Branch, Region VIII, Office of Student Financial Assistance ("OSFA") of the U.S. Department of Education ("ED"), and, pursuant to 34 C.F.R. ?? 668.111-.124, requests that the FPRD be reversed. 1/

Preliminary Statement

The single Finding at issue in this case is Finding No. 1. There are three separate bases for summarily reversing Finding No. 1. The first is that Finding No. 1 is virtually identical both legally and factually to the single finding in issue in In re Edmondson Junior College, Docket No. 93-7-SP (Initial Decision June 4, 1993) ("Edmondson"), 2/ in which Administrative Judge Canellos ruled in favor of Edmondson Junior College, which, like Blair Junior College, is one of the schools owned and operated by Phillips Colleges, Inc. (Exh. R-3-l, ¶ 1).

The record submitted by Edmondson Junior College in Edmondson is virtually identical to the record submitted herein by Blair. The legal issues raised, infra, in support of Blair's position that Finding No. 1 must be reversed and vacated were all raised by Edmondson Junior College in Edmondson. What was dispositive for Administrative Judge Canellos in Edmondson was that "Edmondson chose to be treated as a non-term school, I' and "it disbursed funds based on its decision to be a non-term school." (Appendix A, at 5). This Tribunal should reverse Finding No. 1 for the reasons stated by Administrative Judge Canellos in Edmondson.

The second reason Finding No. 1 must be summarily reversed is found in the workpapers of the Office of Inspector General ("OIG") for an QIG audit conducted of Phillips Colleges, Inc. ("Phillips") for the period July 1, 1987 - June 30, 1990, where the OIG auditor stated the following as his "CONCLUSIONS" on the very issue which is Finding No. 1:

For financial aid purposes, colleges of PCI [Phillips Colleges, Inc.] measure students' progress in credit hours or clock hours but without standard academic terms. For Pell, Perkins loans and SEOG [Supplemental Educational Opportunity Grant) funds, PCI schools were required to make only two payments of SFA [student financial aid] for each academic year according to PCI policies.

(Exh. R-9-1) . Precisely.

The third reason why Finding No. 1 must be summarily reversed is that institutions operating with standard academic terms charge tuition and fees on a per term basis. For example, a Quarter Term institution will structure its tuition charge based on the number of credits taken per Quarter Term and bill students for payment of that amount each Quarter Term. This method of operation definitively and unequivocally defines a school as being a standard quarter term school;

however, charging as Blair does on the basis of the full cost of the education program in which a student is enrolled precludes Blair from being a standard term institution. See, e.g., Exhibit R-l0-l-8, which are various forms of Enrollment Agreements used at Blair during the period covered by the FPRD, and shows the total tuition for the various two-year Associate Degree Programs represented in Exhibit R-l0 that the student contracted to pay, subject to the Refund Policy contained on the back of each; Exhibit R-l0-9-11, which were supplements to the College's Catalog showing various tuition costs during the relevant part; and Exhibit R-11-5, which is an excerpt from a Blair 1988-90 Catalog stating: "The College quotes standard tuition prices for each regular program offered."

The fact that Blair's practice of charging on the basis of the full cost of the educational program precludes Finding No. 1 is clearly established in the November 22, 1988 Memorandum from William L. Moran, then Director, Division of Policy and Program Development for OSFA, who advised all Regional Offices:

The loan period must coincide with a bona fide academic term established by the school.

See § 427A(g) (2) of the [HEA]. 3/ An academic term that is not used for purposes of assessment of institutional charges would not constitute a bona fide academic term.

The minimum period for which a school may certify a loan application is:

° at a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

° at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of a) the length of the student's program at the school, or b) the academic year as defined by the school in accordance with 34 CFR 668.2, paragraphs (b) and (c) of the definition of "Academic Year."

(Exh. R-8) (emphasis in the original) . 4/

This principle was formally made part of the Federal Family Education Loan Program ("FFELP") regulations as 34 C.F.R. § 682.200(b):

Period of enrollment. The period for which a Stafford, SLS, or Plus loan is intended. The period of enrollment must coincide with a bona fide academic term established by the school for which institutional charges are normally assessed. The period of enrollment is also referred to as the loan period.

(57 Fed. Reg. 60327) (Dec. 18, 1992) (emphasis added in part) .

Thus, it is clear that it was OSFA's intent and policy that in order for a college to choose to define its academic year as consisting of Quarter Terms, that college would have to assess institutional charges on the basis of Quarter Terms. Blair has never assessed institutional charges' on a Quarter Term basis. As established in Exhibits R-10 and R-l1, the College assessed tuition

on the basis of the specific educational program in which a student was enrolled. Therefore, the College would not have been considered by OSFA to have a bona fide Quarter Term, and indeed had no choice but to define its academic year on a credit hour without term basis.

Therefore, for each of these reasons, individually and collectively, Finding No. 1 must be summarily reversed.

ARGUMENT

I. Finding No. 1 Must Be Reversed Because As A Non-Term Institution, The College Was Entitled To Disburse Title IV Funds In Two Equal Payments

A. The History Of The Interactions Between Phillips' Colleges, Inc. And OSFA On The Issue Of Non-Term Institutions

It is impossible to tell from the FPRD what OSFA's basis is for Finding No. l. Blair's understanding of OSFA's position is' that, according to OSFA, Blair was a school operating under a system of Quarter Terms, and, so the argument goes, Blair was required to disburse Title IV aid in three installments rather than two. 5/

Blair in fact operated without terms and thus was free to disburse Title IV aid in two installments, just as is stated in the OIG workpapers quoted above (Exh. R-9-1) Moreover, the background of Blair and the other Phillips colleges in operating in this manner is highly relevant. This is so because in 1979, after the Region IV program reviewer questioned the manner in which that Phillips college was disbursing Basic Educational Opportunity Grants (now called Pell Grants) and forwarded portions of the college's Catalog to OSFA, OSFA itself acknowledged that all of the schools owned by Phillips Colleges, Inc. had the discretion to determine whether they were non-term institutions, when, with respect to Phillips, OSFA ruled that "[i] f the school does not have regular terms, it should adhere to [45 C.F.R.] § 190.64(b), even though it publicizes in the catalog that it does have quarters." 6/ (Exh. R-3-58) (Emphasis added). See Exhibit R-3-48-58. 45 C.F.R. § 190.64(b) (1979) (44 Fed. Req. 5285 (1979)) is now 34 C.F.R. § 690.63(c): "At an institution which measures progress by credit hours but does not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by" multiplying the Scheduled Pell Grant by the fraction resulting from dividing the number of credit hours the student is expected to take in a payment period by the number of credit hours in the academic year.

OSFA's August 13, 1979 ruling (Exh. R-3-58) is crucial for several reasons. First, after OSFA told Phillips Colleges, Inc. in 1979 during a program review that its school could consider itself a non-term institution and disburse Title IV funds in two payments if it chose to do so, ten years went by during which OSFA reviewed literally dozens of schools owned by Phillips, including Blair Junior College, never raising this issue. See Exhibits R-3-48-49 and R-4-2. As Donovan M. Woodside, Jr. states in his Affidavit regarding OSFA's change of position beginning in June 1989 and the fact that the regulations did not change over that period, "[w]hat has changed after ten years is [ED's] interpretation and application of their regulation to Phillips' Colleges, Inc." (Exh. R-3-49).

Second, Mr. Woodside's assessment was affirmatively confirmed by the fact that in a 1988 program review of Phillips' Southern Junior College, Birmingham, Alabama ("Southern") . Region IV questioned Southern's disbursing aid in two payments "on a credit hour without terms system" because the program at issue, the Cosmetology Program, "is shown as a 1,500 clock hour program." (Exh. R-12-4). As soon as Phillips documented to Region IV that Southern's Cosmetology Program and indeed all its programs were approved for credit hours (Exh. R-12-12-14), OSFA closed this finding with nothing further required of Southern (Exh. R-12-15) . In so doing, OSFA was confirming that Southern's disbursing aid in two payments on the basis of a credit hours without terms system was permissible. In this regard, what Southern was doing is precisely what Finding No 1 asserts Blair could not do. 7/

The third reason why OSFA's August 13, 1979 Memorandum (Exh. R-3-58) is crucial is because it was precipitated by a July 10, 1979 Memorandum (Exh. R-3-52-53) based on a factual scenario comparable to what existed at Blair during the relevant period, July 1, 1987 - June 30, 1990; namely, students' attended sessions of unequal lengths; that is, during this period, Blair offered sessions to its students with durations of six or 12 weeks, which sessions overlapped. Blair's six-week sessions did not start when its 12-week sessions started. (Exh. R-3-5, ¶ 16). Indeed, students could enroll in a six-week session at any time during their program, which six-week sessions are referred to in Blair's Catalogs and other publications as "mini-quarters: and "mid- quarters" Many students began their course of study in a six- week session, and a number of other students enrolled in additional six-week sessions to retake courses or to take additional courses in order to accelerate completion of their program. (Exh. R-3-5, ¶¶ 17-18). See Exhibit R-11-2-4, which is Blair's Academic Calendar.

In addition, Blair's Academic Calendar makes it clear that the College Is in session on a year-around basis. (Id.) . As in Edmondson, this "schedule is not typical of a term school, which generally has separate, non-overlapping sessions." (Appendix A, at 4). It is therefore clear that Blair did not limit its admissions periods to once every three months, as one would expect with a Quarter Term school. Furthermore, in Edmondson Administrative Judge Canellos stated: "It is significant to note that the Phillips calendar which was the subject of the [1979] memo [Exhibit R-3-52-53] and the Edmondson calendar which is at issue in this case are indistinguishable." (Appendix A, at 3). Exactly the same statement can be made about the Blair calendar. Compare Exhibit R-3-57 with Exhibit R-11-2-4.

Finding No. 1 must be reversed.

B. The College Violated No Statute Or Regulation And Is Entitled To Be Treated As OSFA Treated Other Similarly Situated Schools

Throughout the relevant period, Blair Junior College was a non-term institution and was in full compliance with the requirements governing such institutions. This fact is fatal to the FPRD because, as a matter of law, in order to establish a repayment liability, OSFA must, at a minimum, demonstrate that the College violated the Higher Education Act ("HEA") or a Title IV regulation. 8/ However, OSFA's conclusion in Finding No. 1 that the College used two payment periods to disburse Title IV aid but was required to use three is based on nothing more than OSFA's contention that the College was a standard term school.

OSFA's contention does not withstand scrutiny not only because the College was a non-term institution, but also because in the absence of any definitive regulation governing the issue, OSFA is attempting to manipulate existing regulations to accommodate its opinion of what the law should be, disregarding both what the law is and how OSFA has applied the law to other institutions over the years.

In Edmondson Administrative Judge Canellos observed that, "[i]n essence OSFA admits there is no regulation or statutory provision defining an academic 'term.'" (Appendix A, at 3). However, it is equally correct that ED has long recognized in the regulations that there are both standard term institutions and non-term institutions. A non-term institution is anything other than a standard term institution. ED has also recognized in its Federal Student Financial Aid Handbook ("Handbook") the existence of "non-standard terms." See, e.g., the 1988-89 Handbook (at 4-47) and the 1989-90 Handbook (at 4- 43). "Non-standard terms" are not, however, provided for in the regulations defining "academic year" or "payment period" except as they are not standard terms, i.e., not a semester, quarter or trimester. Therefore, even though in the Handbook ED created a third methodology to calculate payment periods, namely, a non- standard term, 9/ that methodology was not consistent with the regulatory definitions of "academic year" or "payment period", which only allow for standard term or non-standard term divisions of an award year for purposes of making disbursements. Thus, Blair was entitled to use either the non-standard term calculation for Pell only or the calculation provided in the regulations for schools without standard terms for all Title IV programs, which is the option Blair chose.

Furthermore, the current regulatory definitions of "academic year" and "payment period" have not materially changed since 1979 when OSFA made the ruling referred to above. In fact, since well before 1979, the Title IV regulations have defined "academic year" and "payment period" . Although the numbering of those definitions within the regulations has changed, their substance has remained constant.

In particular, the definition of "academic year" provides:

(a) A period of time in which a full- time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system;

(b) A period of time in which a full- time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(c) At least 900 clock hours at an institution which measures academic progress in clock hours.

34 C.F.R. § 668.2 (1991). That definition applies to the Pell, Perkins, CWS, SEOG, and GSL programs.

Prior to the implementation of a deregulation initiative for Title IV regulations, 51 Fed. Reg. 41922 (November 19, 1986), however, the definitions were not consolidated in 34 C.F.R. § 668.2, but were included in each particular section of the regulations relating to the respective

program. For example, from 1981 through 1986, the definition of "academic year" could be found in 34 C.F.R. § 674.2, 675.2, 676.2, and 682.200 regarding the Perkins, CWS, SEOG, and GSL programs, respectively. Interestingly, § 690.2, which covered the Pell Grant program, referenced § 668.2 for the definition of "academic year." However, the definition of "academic year" was not actually included in § 668.2 until the November 19, 1986 Federal Register Notice, effective January 1987. From 1979 through 1980, the definition of "academic year" was set forth in 45 C.F.R. § 174.2, 175.2, 176.2, and 190.2 with regard to the Perkins, CWS, SEOG and Pell programs, respectively.

Not surprisingly, the regulatory definition of "payment period" followed the same chronological path as "academic year," except for the Pell Grant program for which a unique definition was promulgated to fit the particular needs of that program, and for the GSL program which does not provide a definition of "payment period" at all. More specifically, the definition of "payment period" as applied to the Perkins, OWS, and SEOG programs' provides:

A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of and academic year.

34 C.F.R. §§ 674.2, 675.2, and 676.2 (1981 through 1991); 45 C.F.R. §§ 174.2, 175.2, and 176.2 (1979 and 1980). By contrast, the Pell definition of "payment period" for institutions like the College that do not operate with standard academic terms provides:

(1) For a student whose educational program is one academic year - -

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours); and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

34 C.F.R. § 690.3 (b) (1981 through 1991); 45 C.F.R. § 190.2a (e) (1979 and 1980).

Accordingly, the definitions of "academic year" and "payment period" have remained unchanged.

These regulations are clearly designed to accord institutions the maximum amount of flexibility in determining the type of term offered. For example, both prior to and during the period at issue, as well as currently, 34 C.F.R. § 690.3 (a) (1) had defined "payment period" for a non-clock hour institution that "uses semesters, trimesters, quarters or other academic terms" as being "the semester, trimester, quarter or other academic term." (Emphasis added) Similarly, for an institution like Blair that does not have standard academic terms, 34 C.F.R. § 690.3(b) provides for two payment periods or more "[i]f an institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year...". (Emphasis added) . In this case, Blair defined itself as a non- term institution because it had overlapping periods of instruction of unequal length. As set forth above, the College offered sessions to its students with

durations of 6 or 12 weeks. The 6-week sessions did not start when the College's. 12-week sessions started, and, clearly, the varying lengths of these sessions constituted an academic year without terms. See Exhibits R-3-4-6, R-3-48-58 and R-4-1-2. Thus, for Blair, operating as a non-term institution was logical, and it was free to do so. Moreover, based on Exhibit R-8, Blair actually was precluded from doing otherwise.

Additional support for reversing Finding No. 1 is that during the period covered by the FPRD, Blair defined its academic year as nine months and expected its full-time students to be enrolled in a minimum of 36 credits in a nine-month period. Therefore, Blair's academic year of nine months was equivalent to 36 credits, and Blair considered that until a student completed 36 credits, he or she was considered to be a freshman. (Exh. R 3-5-6, ¶ 20). Consistent with this, Blair assessed satisfactory academic progress at the end of the academic year (i.e., 36 Docket No. 93-23-SP credits) for programs that were two or more years in duration and for shorter programs at the halfway point of their maximum allowed length as defined by its Satisfactory Progress Policy. (Exh. R-3-6, ¶ 21). Furthermore, as a matter of corporate policy applicable to all Phillips colleges, during the relevant period, Blair advised its students of the source of all Title IV funds the student would receive, the scheduled amount of those awards, and that those awards would be disbursed in two payments per academic year. (Exh. R-3-3-4, ¶ 10). This was accomplished via a standard form, entitled "Financial Aid Award and Acceptance Voucher" (Exh. R-3-4, ¶¶ 11-12; Exh. R-3-46) . Moreover, Phillips' Director of Compliance has no knowledge that any student ever complained that Title IV awards were disbursed in two payments rather than three. (Exh. R-3-4, ¶ 13).

In this regard, as already noted in Edmondson, it must be kept in mind that ED has never defined in regulation what constitutes a standard term, that is, the regulations nowhere define "semester," "quarter," "trimester" or "other academic term." However, "standard terms" are described in the 1988-89 (at 4-45) and 1989-90 (at 4-41) Handbook as being of approximately equal length. Therefore, it was entirely permissible for Blair to operate precisely as it did. After all, as noted above, Phillips was told in 1979 to operate under 45 C.F.R. § 190.64(b), which is now 34 C.F.R. § 690.63(c) and applies to schools without academic terms. Consequently, not only has ED left it up to each individual institution to define its own academic terms, but also whatever the institution selects plainly cannot be in violation of the HEA or a Title IV regulation. Indeed, using reasoning equally applicable here, this Tribunal held in Associated Technical College, at 19:

[T]he regulations permit ATC to choose its method of measuring its programs, so long as it satisfies one of the alternative regulatory minimums. While OSFA may wish that ED's regulations were different, they are not and cannot be enforced as if they were.

The flexibility, choice and discretion vested in schools both by OSFA and the Title IV regulations are crystal clear in the written advice OSFA has given institutions over the years. 10/ One example highlighting this vested flexibility is a May 10, 1988 response by Region IV to a Policy Interpretation Request. (Exh. R-5-1-3) . The question asked was whether it was possible for an institution to define its academic year in credit hours for the Pell program and in months for the campus-based programs in a situation where, exactly like Blair, the school's academic term "is defined as credit hours without terms." (Exh. R-5-3) . The specific fact situation there

was: "A typical student will take 48 credit hours within 9 months. For Pell Grant disbursements, the academic year is defined as 48 credit hours and disbursements are made for payment period 0-24 credit hours and 25-48 credit hours. For campus-based disbursements, the academic year is defined as 9 months and payments are made at the beginning and at the midpoint, at the end of 4-1/2 months." (Exh. R-5-3) . Region IV answered (Exh. R-5-1):

Yes. It is possible to define the academic year in credit hours for the Pell Grant Program and in months for the campus-based programs.

Similarly, in a September 25, 1981 letter, William L. Moran, Chief, Policy Section, Basic Grant Branch, advised South Oklahoma City Junior College with regard to "the appropriate method of determining an academic year for a system that has overlapping terms" that this was at the option of the school. Thus, for that school, "[d]espite the overlapping terms in your academic system, it is still permissible to use a 32-week academic term. However, you have the option of using a 43.27 week academic year if you prefer." (Exh. R-5-5) (emphasis added) . In addition, in a September 22, 1982 letter from the Acting Chief, Policy Section, Basic Grant Branch, OSFA advised Atlantic Community College that "if the combined blocks [of academic credits] taken during a semester are less than a semester, it would be treated as a nonstandard term. For purposes of the Culinary Arts program, if the student is enrolled in fewer than 4 combined blocks and the student is not enrolled in any general education credits, then he or she is considered to be enrolled in a nonstandard term." (Exh. R-5-6).

Another example of the ability of the school to determine for itself whether it will function as a standard term or non-term institution is contained in a November 19, 1984 letter from the Chief, Policy Section, Pell Grants Branch, to the Upper Valley Joint Vocational School District:

Section 690.3 of the Pell Grant regulations defines the first payment period for institutions' that do not use academic terms as the period of time in which the student completes the first half of his or her academic year. If you do not consider the "quarters" in the 1343-hour License Practical Nurse Program to be academic terms, then a payment period for the Pell Grant Program would be one-half the academic year. If you define the academic year as 1343 clock hours, the first payment period would be 672 clock hours' and the second payment would be 671 clock hours.

(Exh. R-5-7) (emphasis added) .

Still another example of OSFA's policy of allowing schools to define their own academic terms is the letter dated November 8, 1988, from Pamela A. Moran, Chief, Policy Section, Guaranteed Student Loan Branch, in which OSFA advised a school of medicine that whether its students are "eligible to receive five loans in a 10-semester period (40 months) is determined by the school's definition of an academic year and the guarantee agency's loan guarantee policy." (Exh. R-5-8). Accordingly, Blair Junior College is similarly permitted to define for itself its academic year, and the consequences of the College's definition are that it is a non-term institution.

After all, with respect to the issue of whether, as in Edmondson, OSFA must honor the College's choice to have operated as a non-term institution throughout the relevant period, the College has an absolute right to be treated by OSFA precisely as OSFA has treated other schools.

Consequently, the various examples of OSFA's treatment of other schools (Exh. R-5) are highly relevant and stand in marked contrast to Finding No. l. In fact, in response to a question posed to Region V as to whether a school may be allowed to retroactively formalize in writing its definition of academic year for GSL purposes and reconstruct student awards to establish that all GSL applications were certified properly (Exh. R-5-9), OSFA responded:

A school may change its definition of an academic year, assuming it complies with the regulatory definition cited above. However, the new definition may not be applied retrospectively.

(Exh. R-5-10) . Clearly, therefore, Blair was free to define or redefine its academic year as it saw fit so long as its definition met the regulatory definition of "academic year," a fact which is not questioned by OSFA in this case. Furthermore, on November 20, 1989, in response to an inquiry from a school that wished to change from three payment periods to two, Region VI advised: "The answer to your question is dependent upon the structure of the academic program. . . . If the program does not have academic terms, the academic years of 36 credits may be divided into two payment periods of 18 quarter hours each." (Exh. R-5-11) . See Exhibit R-3-5-6, ¶¶ 20-21.

In short, as this Tribunal recognized in Edmondson, OSFA cannot dictate or decide for Blair whether to use standard terms or non-terms. That is solely the College's option, and the fact that Blair did not adhere to what OSFA would have chosen is legally irrelevant. In this regard it is important for this Tribunal to know that OSFA was fully aware that Blair was a non- term institution because the OIG workpapers include the following portion of the Financial Aid Manual issued by Phillips to all of its colleges:

CREDIT HOUR NON-TERM AWARDS

The colleges of the Phillips College system measure progress in credit hours or clock hours but without standard academic terms. The tuition and book costs are for the entire program, not for the classes scheduled each grading period.

ACADEMIC YEAR

The institution must identify its academic year meeting the minimum established by regulations.

For schools using credit hours or clock hours but not using terms, an academic year is the period in which a student is expected to complete a minimum of 36 quarter hours, 24 semester hours, or 900 clock hours.

(Exh. R-9-4) (emphasis added); accord, Exhs. R-9-2 and R-3-5-6) .

In addition, how Blair conducted itself and actually was treated by ED contemporaneously is far more relevant than OSFA's suddenly deciding in June 1989 that it no longer agreed with what it said to Phillips in 1979. Two examples of actual conduct are

that Blair informed its students that their Title IV aid would be disbursed into two payments (Exh. R-3-3-4, ¶¶ 10-12, and Exh. R-3-46) and never received any complaints (Exh. R-3-4, ¶ 13). Two more examples are shown in the way in which Blair reported enrollment data to ED on the annual Fiscal Operations Report and Application to Participate ("FISAP") for the 1987-88, 1988-89 and 1989-90 award years, Exhibits R-13-2, R-13-4, and R-13-6, respectively. All institutions that participate in the SEOG, Perkins and CWS programs are required to make such a report annually. For each of the subject award years, Blair reported enrollments on a monthly basis, see, e.g., Exhibit R-13-6, based on the FISAP instructions for institutions operating on a "Nontraditional calendar," defined as follows: "Non-traditional calendar means that your institution admits a new group of students monthly or more frequently into a majority of its eligible programs, even if they attend classes on a quarter, trimester, or semester basis." (Exh. R-14-2). The FISAP instructions also stated: "Traditional calendar means that your institution has academic terms that are quarters, trimesters or semesters, and that the institution has only one admission period during each academic term." (Id.) This stands in marked contrast to Blair because, of the twelve months reported on Exhibits R-13-2, R-13-4, and R-13-6, respectively, Blair had significant numbers of new students beginning enrollment for 8 of the 12 months reported (Lines 9-21). In fact, during the three years reported on Exhibit R-13, Blair Junior College enrolled 60 or more new students in 24 of those 36 months.

The fact that Blair's multiple admission periods are both well documented and far more frequent than once every three months as a Quarter Term institution would be expected to have and to report is further support for the conclusion that Blair was a non-term institution.

Beyond this, 34 C.F.R. § 668.2 defines "Academic year" for a non-term institution such as the College, which measures satisfactory progress in credit hours, as a "period of time in which a full-time student is expected to complete at least 36 quarter hours...". This conforms with 34 C.F.R. § 690.63, which explains how to calculate each payment period for Pell Grant purposes at an institution that, like Blair, does not have terms of equal length. This was verified on August 19, 1982 by the Chief, Basic Grant Branch, who advised Region IX:

Section 690.3(d) (1) of the Pell Grant regulations specifies that an institution participating in the Pell Grant program under the Regular Disbursement System (RDS) that does not use semesters, trimesters, quarters, or other academic terms must have at least two payment periods for each academic year. The campus based regulations use similar language in Sections 674.16(e) (1) and (2) and 676.16(b) (1) and (2). There it states that the institution must advance funds at least twice during an academic year, once at the beginning and once at the midpoint of the academic year.

* * *

Currently there is no plan to require institutions to standardize their definitions of payment periods among the programs.

(Exh. R-5-12-13) (emphasis by OSFA) .

Consequently, what Blair did conforms with 34 C.F.R. § 690.3(b), quoted above, at 14, which permits two payment periods. Still another applicable regulation is 34 C.F.R. § 690.76, which provides:

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(Emphasis added) . Accordingly, the College was in perfect accord with the applicable regulations.

Beyond this, what Blair did also conforms with 34 C.F.R. § 690.63(c), which explains how to calculate each payment period for Pell Grant purposes at an institution that, like Blair, does not have academic terms. 34 C.F.R. § 690.63(c) applies to all educational programs at Blair (with the exception of Cosmetology, which is measured in clock hours) . It directs that each disbursement be calculated by multiplying the student's scheduled Pell Grant by the fraction resulting from the number of credit hours the student was expected to take in a payment period (typically 18) divided by the number of credit hours in an academic year (typically 36). This is exactly how Blair calculated its disbursements. See Exh. R-3-5-6, ¶¶ 19-21.

Accordingly, Finding No. 1 must be reversed.

C. The FPRD Violates Equal Protection Rights

Exhibit R-5 is clear evidence that for every institution other than the College (and other institutions owned by Phillips) , 11/ ED permits the institution to define its own academic terms and to operate, if the institution so elects, as a non-term institution. The fact that OSFA is seeking to impose on the College OSFA's view that the College should have operated as a standard term institution and deny to the College rights OSFA extends to every other institution is a violation of law . 12/ Simply stated, when OSFA has one policy for everyone else and a different policy for Blair, the College's fundamental rights have been violated. Equal protection "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 439 (1985); accord, Mahone v. Addicks Utility District of Harris County, 836 F.2d 921, 932 (5th Cir. 1988):

As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equal protection. Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L.Ed. 220 (1886).

Furthermore, OSFA is also obligated to act in accordance with 20 U.S.C. § 1232(c), which requires that all "regulations [of the Secretary of Education] shall be uniformly applied and enforced throughout the fifty States." See Chula Vista City School Dist. v. Bennett, 824 F.2d 1573, 1583 (Fed. Cir. 1987), cert. denied, 484 U.S. 1042 (1988).

D. The College Has Improperly Been Denied The "Safe Harbor" Of OSFA's Policiesreversed.

OSFA routinely provides guidance to its own employees, to the institutions who participate in any Title IV programs and to the general public. This guidance can be in a wide variety of forms ranging from the Federal Register to ED publications like the Handbook to letters written by OSFA answering questions posed to ED. These forms of guidance all have at least one thing in common: institutions which act in a manner consistent with such guidance are to be accorded the benefit of the Secretary's "safe harbor." As this Tribunal held in Associated Technical College, at 27, "ED has established a so-called 'safe harbor' for past actions. If a school fully acts in the manner instructed by OSFA, there will be no penalty for such past action if OSFA subsequently decides to change a policy direction." This ruling was appealed by OSFA to the Secretary, who affirmed.

Another authoritative acknowledgment of this "safe harbor" is found in the Supplemental Declaration of Ernest C. Canellos, who was then Acting Deputy Assistant Secretary for OSFA, Exhibit R-6, which was filed by ED in Federal Court in a lawsuit arising out of a Federal Register Notice:

* * *

4. The Federal Register Notice provides the public, including plaintiffs, with non-binding, non-exhaustive guidance on acceptable means of complying with the amendments to [20 U.S.C.] § 1091(d)....

5. The Secretary will not rely on the general statements of policy in the Federal Register Notice as dispositive, since the statements are not binding on the Secretary or on other parties.

6. The statements. however. do provide a safe harbor. . . .

(Exh. R-6-2) (emphasis added) .

Accordingly, as a matter of law not only "the general statements of policy" contained in Exhibit R-5, but also the specific statements made to Phillips in Exhibits [R-3-17-28] provide Blair with a "safe harbor." In short, OSFA's clear policy guidance in 1979 (Exh. R-3-47-58) and its equally clear statement as to what constitutes a bona fide academic term (Exh. R-8) as well as Region IV's treatment of Southern (Exh. R-12) all confirm the correctness of Blair and Phillips doing precisely what Finding No. 1 now asserts the College could not do. Moreover, after the 1979 ruling by OSFA, "the Department of Education closed its [program] review with no further action required by Phillips Colleges, Inc. with respect to this finding, I and this issue was not raised again in any of the literally dozens of program reviews and audits conducted by OSFA for schools owned by Phillips between 1979 and June 1989. See Exhibit R-4-2.

For all these reasons, Finding No. 1 must be reversed.

II. OSFA's Formula For Finding No. 1 Is Totally Flawed

Assuming arguendo that this Tribunal disagrees with Edmondson and all of the arguments of Blair Junior College set forth in Section I, supra, and concludes that OSFA is correct and that

Blair was legally required to disburse all Title IV funds in three payments rather than two during the period at issue, this Tribunal must nonetheless dismiss Finding No. 1 or, in the alternative, remand Finding No. 1 to OSFA with clear directions as to how to calculate the amount of the repayment liability, if any.

Dismissal is appropriate for two separate reasons. First, Finding No. 1 is fatally flawed because the repayment liability of $1,004,954 asserted by OSFA does not account for -- much less adjust for - - the fact that Blair has already made refunds for students who withdrew during the 1987-88, 1988-89 and 1989-90 award years totalling $1,453,085.92 (Exhibit R-3-3, ¶¶ 8- 9), which is $448,131.92 more than OSFA claims is due. Even if this Tribunal does not summarily reject Finding No. 1 on this basis alone, it must rule that such an adjustment is imperative because the figures used by OSFA in its formula to arrive at the asserted repayment liability were not net of all these refunds. After all, the universe of students and refunds listed in Exhibit R-3-7-45 is exclusively made up of students who withdrew, and, therefore, is precisely the universe of students OSFA is concerned with. This is so because students who withdrew but nonetheless attended at least past the point when OSFA asserts the third payment period should have begun received the correct total amount of Title IV aid regardless of whether it was disbursed in two payments or three.

Dismissal also is appropriate because Finding No. 1 seeks repayment of $1,004,954 based on nothing more than OSFA's totally flawed formula. The 34% figure OSFA says is the "Excess Amount" (Exh. R-2-2) is not explained, much less supported, and must be rejected out of hand. Moreover, that formula is aptly best characterized as a "guesstimate" that does not meet OSFA's legal obligation to make a prima facie case, i.e., meeting its burden of producing substantial evidence that -- assuming arguendo that Blair has any repayment liability whatsoever, which Blair denies -- the amount of Blair's repayment liability is $1,004,954. See In re Berk Trade and Business School, Docket No. 91-5-SP, at 8-17 (Initial Decision, December 10, 1992), aff'd by the Secretary, March 19, 1993.

Simply stated, the application of OSFA's formula is, as a matter of law, per se arbitrary and capricious if even one of its elements is unsound. As the Supreme Court held in Motor Vehicle Mfgs. Ass'n of the United States v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983), an agency's decision will be found to be arbitrary and capricious

if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise .

Accord, Goodman v. Public Service Comm'n, 497 F.2d 661, 666 (D.C. Cir. 1974) (footnotes omitted) :

In any analysis of whether an end result (i.e. the new rate) is not arbitrary, we are aware that since the result is but the "sum of a number of components," each component must be analyzed. Mississippi River Fuel Corp. v. FPC, 82 U.S. App. D.C. 208, 163 F.2d 433, 451 (1947).... We must ascertain . . . "whether each of the Commission's Order's essential elements is supported by

substantial evidence in the record." If each component or element is not arbitrary or capricious, the end result will be a sound one .

In the alternative, this Tribunal must remand Finding No. 1 with directions to OSFA to calculate the repayment liability, if any, after taking into account each of the following adjustments and corrections:

l. Any liability must adjust for all refunds previously made.

2. The College is entitled to net or offset against any overawards based on two payments any underawards based on three payments. For example, under a two-payment system, assume Student A got 50% of his award with the first disbursement but withdrew such that the one disbursement he received would have only been 33-1/3% under a three payment system. Under a second scenario, however, assume Student B withdrew before reaching the mid-point of the academic year under a two-payment system but after the start of the second of three payment periods under the three payment periods OSFA seeks to impose retroactively on the College. Under the two-payment system, Student B received only 50% of his award but under OSFA's three payment system Student B was entitled to receive 66-2/3% of his award, resulting in an underaward to Student B of 16-2/3%. Overawards to Student A must therefore be netted against underawards to Student B to achieve an equitable result and the true financial effect of the two payment system versus the three payment system.

In this regard, it is important to note that in Edmondson Administrative Judge Canellos observed that "OSFA fails to realize that Edmondson may have saved federal money at those times when the school disbursed 50% of the available funds before a student withdrew rather than the 66% that it would have disbursed had a second payment been authorized and the school had been practicing as a term institution." (Appendix A at 5). Furthermore, the College's right of offset, i.e., the obligation on the part of ED to net overpayments against underpayments, exists under Section 490(d) (7) of the Higher Education Amendments of 1992, amending Section 487(c) of the HEA, which permits an institution to offset Title IV funds to which it was entitled but did not receive against any Title IV funds determined to be owed by the institution.

3. Another adjustment results from the fact that the formula used in the FPRD fails to take into account that under the system of disbursement used by Blair during the entire period at issue, a student who started school at the beginning of a full 12-week session and withdrew during the second 12-week session would not have received his or her second disbursement. See Exhibit R-3-5, ¶ 19. In short, since these students had enrolled in 2/3 of their academic year, they were entitled to 2/3 of their Title IV awards; however, only 1/2 had been disbursed. All such students must be excluded both from any determination of the number who withdrew or withdrawal rates and total disbursements made. Finding No. 1 is flawed by OSFA's failure to do so.

4. OSFA's finding ignores the SEOG, Perkins, and GSL regulations which allow institutions to disburse certain dollar amounts in one payment. Specifically, the applicable SEOG regulation, 34 C.F.R. § 676.16(f), provides: 13/

Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG and NDSL program is less than $50l. 14/

The same is true for the regulation governing the Perkins loan program. 15/ 34 C.F.R. 674.16(g) provides:

Only one advance is necessary if the total amount the institution awards a student for an academic year under the Perkins loan program is less than $501.

Allowing for an even greater amount to be disbursed in one payment, the GSL Program regulations state at 34 C.F.R. § 682.207:

(c) (1) Multiple disbursement requirements: A lender shall disburse GSLP and PLUS Program loans made to student borrowers in multiple installments if --

(i) The amount of the loan is $1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, one semester, two quarters, or 600 clock hours.

Rather than excluding SEOG, Perkins, and GSL amounts which were below the threshold necessary for two payments, the Final Program Review Determination disputed all student financial aid disbursements that were disbursed in two payments.

5. Pursuant to 34 C.F.R. § 690.3, no student can receive more than his or her Scheduled Pell Grant in any award year. Therefore, to the extent Student A was "overawarded" under the example given above, his or her eligibility to receive Pell in that award year from a second institution was reduced dollar- for-dollar. Since, by definition, OSFA is only concerned in Finding No. 1 with students who withdrew, to the extent that these students re-enrolled at another institution during the same award year, the College is entitled to a credit for the amount that the Pell awarded at the second institution was reduced by the so-called overaward. This information is not available to the College, but is available to ED from the entity with which it contracts to process data relating to Pell.

6. Still another error in the FPRD is overstating Blair's Title IV disbursements for the SEOG and Perkins programs by including administrative expense allowances and institutional dollars which required matching funds. Thus, instead of basing its calculation on the SEOG funds disbursed to students, the FPRD included all SEOG funds, i.e., SEOG funds disbursed to students plus the allowance for administrative expense. Moreover, one- ninth of all Perkins loan dollars lent to students are derived from institutional matching contributions and are not subject to repayment to ED for any reason.

7. OSFA's "formula" is also fatally flawed by the inclusion of the "institution's withdrawal percentage rate" as calculated by Blair's independent auditor for submission to its accrediting agency, AICS, because, as required by law, the figure thus calculated includes (1) non-Title IV

recipients; (2) "no shows", i.e., students who enrolled but never began classes; and (3) students who withdrew only after earning at least 50% of their total award (the amount they actually received) . Therefore, those percentages do not apply to the cohort of students who are the subject of Finding No. l. The necessity to exclude non-Title IV recipients is obvious. Equally obvious is the need to exclude "no shows" since either no Title IV funds were disbursed to them or all Title IV funds disbursed were refunded since "no shows" were in the category of students entitled to a 100% refund. The withdrawal percentage rate is therefore inflated, to the material prejudice of Blair.

8. To the extent Finding No. 1 requires repayment of loan funds, it is flawed because no adjustment is made for the loan amounts already repaid by Blair students and because there is no substantial evidence supporting the amount of loan funds disbursed by Blair. This is so because during the subject period, loans were handled almost entirely through commercial lenders, and neither institutions nor OSFA maintained or reported total loan funds disbursed.

9. Another material error in the FPRD is OSFA's inclusion of the 1987-88 award year. In virtually all of the cases where an Edmondson-type Finding such as Finding No. 1 has been made, OSFA itself has stated in one form or another: "(Liabilities will not exist for the Stafford/SLS/PLUS programs for students who withdrew prior to November 1, 1988)." See Exhibit R-15-5 and R-15-11, which contain that statement by OSFA with respect to, respectively, Nettleton Junior College (see In re Nettleton Junior College, Docket No. 93-23-SP), Phillips Junior College, Charlotte, North Carolina (see In re Phillips Junior College, Docket No. 93-31-SP) . That statement by OSFA is based on 34 C.F.R. § 668.22, which was not effective at any point in time during the 1987-88 award year. Therefore, the claim of liability for the 1987-88 award year must be rejected out of hand.

The reason why OSFA in Exhibits R-15-5 and R-15-11 uses November 1, 1988 as the effective date of a regulation published in the Federal Register on December 1, 1987 is that in a Dear Colleague Letter (GEN 88-32), the Secretary stated that he would not enforce § 668.2.2(c) for a nine-month period.

Therefore, under any view of the law, the inclusion of the 1987-88 award year in Finding No. 1 was improper.

However, as a matter of law, OSFA's inclusion in Finding No. 1 of not only the 1987-88 award year, but also the 1988-89 award year was improper because the subject regulation, 34 C.F.R. § 668.22, did not become effective until July 1, 1989, i.e., after the end of the 1988-89 award year because 20 U.S.C. § 1089(c) provides that regulations "that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after the December 1 date."

Although the Secretary published 34 C.F.R. § 668.22 as a final regulation on December 1, 1987, he admitted that Section 668.22 was one that only "will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980." 52 Fed. Reg. 45712, col. 1 (1987) (emphasis added) . OSFA's attempt to

evade the effect of the Secretary's failure to comply with the requirements of the Paperwork Reduction Act of 1980 by asserting that "[t] hese regulations are generally not subject to [20 U.S.C. § 1089(c)]" (Id.) (emphasis added) is legally meaningless. Regulations like 34 C.F.R § 668.22 that have not been submitted to the Office of Management and Budget ("0MB") pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3504(h), are not "in final form" within the meaning of 20 U.S.C. § 1089(c) because "the authority of an agency under any other law to prescribe regulations, and procedures for Federal information activities is subject to the authority conferred on the Director [of OMB] by this chapter." 44 U.S.C. § 3518(a) (emphasis added). See 58 Fed. Reg. 14153, col. 1 (March 16, 1993).

Moreover, in Exhibit R-16, a June 2, 1993 letter from ED, the Acting FFEL Section Chief, Loans Branch, Division of Policy and Development, 16/ stated that a regulation published in the Federal Register on January 7, 1993 "could not become effective until [OMB] approved the regulation for information collection requirements that it contained. This approval was published in the Federal Register on April 13, 1993." (Exhibit R-16) .

Therefore, publication in non-final form of 34 C.F.R. § 668.22 on December 1, 1987 means that it could not be effective until July 1, 1989, and, therefore, cannot be the basis of liability for any portion of the 1988-1989 award year.

Accordingly, even assuming arguendo that the College should have used three payment periods, Finding No. 1 must still be dismissed or, in the alternative, each one of the nine adjustments listed above must be made in order to determine the amount, if any, of the repayment liability. In the latter case, a remand by this Tribunal to OSFA with directions as to specifically which adjustments need to be made is necessary.

For all these reasons, OSFA's analysis of this issue and its conclusions regarding the College's disbursements are wrong Blair Junior College thus requests the rejection of Finding No. 1 in its entirety.

CONCLUSION

For all these reasons, the Final Program Review Determination must be reversed.

Respectfully submitted,

Leslie H. Wiesenfelder
Dow, Lohnes & Albertson
Suite 500
1255 Twenty-Third Street, N.W.
Washington, D.C. 20037
202-857-2726

Counsel for Blair Junior College

Dated: November 11 1993

1/ The FPRD was timely appealed. See Exhibit R-1. As the Respondent, each of the College's Exhibits has the prefix "R". To maintain consistency and to avoid confusion, the College will use the same exhibit numbers as were used in its Request for Review. Exhibits R-9 through R-15 were not submitted with the request for review but are nonetheless timely under 34 C.F.R. § 668.116(e) (1).

2/ For the convenience of the Administrative Law Judge, a copy of Edmondson is submitted herewith as Appendix A. On July 11, 1992, OSFA appealed Edmondson to the Secretary of Education.

3/ Section 427A(g) (2) of the HEA then stated: "the term 'period of enrollment' shall be the period for which the loan is made as determined by the institution of higher education and shall coincide with academic terms such as academic year, semester, trimester, quarter, or other academic period as defined by such institution."

4/ As an official Departmental document, this Tribunal may take official notice of Exhibit R-8 under 34 C.F.R. § 668.118(c). See, e.g., 4 Stein, Administrative Law § 25.01 (1993) at 25-12 ("administrative agencies have properly taken official notice [of] . . . Facts and generalized information in the agency' s records derived from the agency's normal activities...").

5/ The difference, if any, between two payments and three on the aggregate amount of Title IV aid disbursed to a student in an award year is only relevant to a student who withdraws and is' highly dependent on the point during the award year when that student withdraws. The issue of overpayments to some and underpayments' to others under a two- versus three-payment system is' addressed in Section II, infra.

6/ The ruling did not include the Cosmetology Colleges and colleges located in New York that were owned by Phillips.

7/ Needless to say, something is seriously amiss when the same conduct at two Phillips colleges results in Region IV approving what Southern was doing but Region VIII citing Blair.

8/ As this Tribunal has recognized, the terms of each institution's standard Program Participation Agreement represent a bar to any effort by OSFA to penalize an institution for a violation of some informal standard, i.e., anything other than a statute or regulation.

[I]n certifying institutions to participate in the Title IV student financial assistance programs, the Secretary expressly limits the obligation of institutions to compliance with all applicable "statutes and implementing regulations."

In re Associated Technical College, Docket No. 91-112-SP, at 32 (Feb. 3, 1993) (Decision of Administrative Law Judge Cross), affirmed by the Secretary, July 23, 1993 (hereinafter cited as "Associated Technical College") .

9/ The three methodologies are standard term, non-term, and non-standard term.

10/ This guidance from OSFA also provides the College with a "safe harbor". See Section I.D., infra.

11/ See, e.g., Edmondson, supra; In re Atlanta College of Medical and Dental Careers, Docket No. 91-93-SA, and In re Phillips College of Atlanta, Docket No. 91-96-SA (both pending before Administrative Law Judge Cook); In re Atlanta College of Medical and Dental Careers, Docket No. 93-38-SP, and In re Nettleton Junior College, Docket No. 93-29-SP (both pending before Administrative Law Judge Cross); and In re Phillips Junior College, Docket No. 93-31-SP (pending before Administrative Law Judge Clerman) .

12/ The circumstances which led Phillips ultimately to agree to accommodate ED's insistence that all Title IV funds be disbursed in no fewer than three payments and redefine the College and the other schools owned by Phillips as standard term institutions as of July 1, 1991 are described in Exhibit R-3-49-50. However, that change does not affect either the lack of validity in Finding No. 1 or the correctness of Blair's long-standing position .

13/ For the 1987-88 award year, the applicable regulation, 34 C.F.R. § 676.17(d) (1987), allowed up to $301 to be disbursed in one payment.

14/ The NDSL program no longer exists. The Federal Perkins loan program has replaced it.

15/ For the 1987-88 award year, the applicable regulation, 34 C.F.R. § 674.16 (1987), allowed up to $301 to be disbursed in one payment .

16/ See note 4, supra.