

IN THE MATTER OF SIMMONS SCHOOL  
Respondent.

Docket No. 93-6-SP  
Student Financial Assistance Proceeding

DECISION

STATEMENT OF THE CASE

Student Financial Assistance Programs, or SFAP, (formerly known as the Office of Student Financial Assistance or OSFA), of the Department of Education (the Department), through its New York regional office, issued a final program review determination (FPRD) dated November 10, 1992 to respondent Simmons School (Simmons). (ED Ex. 1 and 2). FPRD was based on a program review report which was dated April 30, 1992. (ED Ex. 2). The report showed that Simmons had disbursed financial assistance under Title IV of the Higher Education Act of 1965 as amended (HEA) to students in a Court Reporting Program (CRP) which was not authorized by the Department of the State of New York for the period April 30, 1990 to February 2, 1992. (SFAP Brief, p. 1). SFAP contends that Simmons is liable for Federal funds disbursed during that period because the Department's regulations require that students be enrolled in authorized programs in order to be eligible for Title IV assistance. (SFAP Brief, p. 1).

Simmons appealed the final program review determination issued by SFAP, and SFAP subsequently referred this case to the Office of Higher Education Appeals for a hearing. This proceeding consists of initial briefs and exhibits submitted by the parties. Substantial use of them is made in this decision.

II FACTS

Simmons is a for-profit proprietary school located in White Plains, NY. By letter dated April 30, 1992, the New York regional office of the Department informed Simmons that he had disbursed Title IV funds to students enrolled in an ineligible CRP. (ED Ex. 2). Approval of the CRP had expired on April 30, 1990 and was not renewed until February 3, 1992. (ED Ex. 1, p. 1).

In the FPRD, SFAP requested that Simmons review its records to determine the amount of funds which were disbursed during the ineligible period. SFAP further requested that Simmons submit a report to the Secretary of the Department identifying the improper disbursements. (ED Ex. 1). The report was to include the Title IV aid disbursed, the names and Social Security numbers of the students, the award year, and the payment period dates. Id.

The report submitted by Simmons indicated that 167 students were enrolled in the CRP during the ineligible period. Id. The Title IV assistance included Guaranteed Student Loans (GSL's), Pell Grants, SLS loans, need based grants, and PLUS assistance. Id. Simmons does not dispute that the CRP was not approved by the State Education Department for the award period April 30, 1990, to February 3, 1992.

Simmons contends that Federal assistance for certain students should not have been disallowed. (Simmons brief at P. 2). Specifically, Simmons asserts that liability should be excused as to the 41 students who enrolled in the CRP before it lost its eligibility and as to 14 students for other reasons. (Simmons brief at pp. 2 and 3).

### III OPINION

#### A. LIABILITY SHOULD NOT BE EXCUSED AS TO THOSE STUDENTS WHO ENROLLED IN THE INELIGIBLE COURT REPORTING PROGRAM BEFORE ITS APPROVAL EXPIRED BECAUSE THE PROGRAM WAS NOT LEGALLY AUTHORIZED

The predominant issue in this proceeding is whether or not a proprietary school is liable for Title IV funds that are disbursed to students who are enrolled in an ineligible CRP even if those students enrolled in the CRP before its eligibility expired.

The Department's regulations provide that students of a proprietary institution must be enrolled in an "eligible" program in order to be considered for participation in a Title IV student financial assistance program. 34 C.F.R. . 668.7(1)(i). An "eligible" program is defined as: "a program of education or training" that is "legally authorized" and "leads to either an academic or professional degree." 34 C.F.R. .. 668.7(1)(i), 668.8(a), and 600.2. SFAP properly points out in its initial brief that without the requisite legal authorization, an institution cannot receive Title IV funding. (SFAP brief p. 6).

The record shows that the CRP was not legally authorized by the State of New York for the period extending from April 30, 1990 to February 3, 1992, and that this fact is undisputed. (ED Ex. 1). Although Simmons requested and was granted a hearing in State court to challenge the loss of authorization for the CRP, it is not within the scope of this tribunal's authority to "second-guess" the State's practices. See generally, *In the Matter of Gulf Coast Trades Center*, Docket No. 89-16-S, U.S. Dep't of Education (Sec. Dec., October 19, 1990). Consequently, the merits of the State challenge must not be considered in this proceeding.

Irrespective of the State challenge, the requirement of legal authorization remains intact and cannot be waived. This is supported by the Department's regulations which provide in relevant part that "the Administrative Law Judge (A.L.J.) is bound by all applicable statutes and regulations and may not waive them." 34 C.F.R. . 668.117(d)(1) (emphasis added).

Simmons alleges in its initial brief that it is the time of student's enrollment in an educational program which determines that student's eligibility for Title IV assistance. (Simmons brief p. 1). Thus, if a student enrolled before the program's approval was terminated, the student's eligibility as a Title IV participant would not be effected when the program's eligibility expired.

This contention is without merit. The Department's regulations provided that it is the time of the Title IV fund disbursement and not the time of the student's enrollment that should govern. That is, each time aid is awarded to a student, that student must be eligible for aid. 34 C.F.R. . 690.75(a) (Pell Grants); see also 34 C.F.R. . 682.604(b)(2) (GSL's & PLUS assistance). Thus, because the student's eligibility is predicated on the eligibility (i.e., legal authorization) of the

SFAP program, a student's eligibility by definition terminates when the program's eligibility expires. To allow students to receive Federal funds for unauthorized programs would therefore be a prima facie violation of the Department's regulations, and of the HEA itself. (See 20 U.S.C. ... 1088(b)(2) and 1085(a)(2) for student eligibility requirements). The fact that a program was approved when a student enrolled does not imply that the student should be considered enrolled in an approved program for time immemorial. When the program's eligibility expires, so does the student's. Consequently, liability for the 41 students enrolled in the 2400 hour CRP prior to its expiration cannot be excused.

#### B. SIMMONS CONTENTION THAT CERTAIN DISALLOWANCES WERE IMPROPER MUST ALSO BE REJECTED.

Simmons requests that liability be excused as to six students who enrolled in the CRP after its approval expired, but received graduation diplomas. (Simmons brief at 3). This assertion must be rejected. SFAP properly points out in its initial brief that "whether or not a student graduates does not render a program legally authorized." (SFAP brief at 9). Regardless of a student's graduation status, the requirement that a student be eligible to receive Title IV funds at the time of the fund disbursement remains intact. Because these students were enrolled in an unauthorized program at the time they received aid, they were ineligible for Title IV assistance. Thus, liability for these six students must be upheld and Simmons is legally bound to refund the unobligated monies to the Department. [See footnote 1](#)<sup>1</sup>

Simmons further alleges that liability should be excused as to six students who were enrolled in word processing and not court reporting during the ineligible period, yet were included on the SFAP list of liabilities. (Simmons brief at 3). The evidence proffered by Simmons in support of this allegation is insufficient. Enrollment agreements presently submitted by Simmons which purport to show a different enrollment status for these six students contradict a student enrollment listing provided by Simmons in 1992. (Appendix A to ED Ex. 1). This new listing does not warrant relieving Simmons from liability. The listing provided in 1992 is more reliable and precludes the new list. Simmons has the burden of proving that the Department's assessments of liability were improper. 34 C.F.R. . 668.116(d). [See footnote 2](#)<sup>2</sup> With regard to these six students, Simmons fails to meet its burden. The new list is poorly copied and unauthenticated. The 1992 list was prepared in the ordinary course of business and hence more genuine.

Simmons also requests that two students (Castillo and Steward) be excused from liability because they never started the program. (Simmons brief at 3). Because these students were not listed in Simmons' report, funds allocated to these students were not assessed by SFAP as liabilities.

IV.

#### FINDINGS AND ORDER

Simmons School distributed Title IV funds to students enrolled in a court reporting program which was unauthorized by the State of New York for the award period April 30, 1990 to

February 2, 1992. Simmons has failed to meet its burden of proving that the disallowances assessed by SFAP were improper. The final program review determination of November 10, 1992 and SFAP.s assessments of liability are hereby upheld.

Dated this 2nd day of August, 1993.

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

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*[Footnote: 1](#)<sup>1</sup> 1 34 C.F.R. § 668.25 provides in relevant part that "when an institution loses its eligibility ... it shall ... refund to the Federal Government ... any unobligated Title IV, HEA program funds and any GSL, PLUS, or SLS proceeds it has received."*

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*[Footnote: 2](#)<sup>2</sup> 2 It is the Title IV participant which has the burden of proving that funds disallowed by the Department are improper. 34 C.F.R. § 668.111(d).*