

In the matter of MOUNTAIN STATES TECHNICAL INSTITUTE  
Respondent.

Docket No. 93-60-SP  
Student Financial Assistance Proceeding

## DECISION

### STATEMENT OF THE CASE

The Student Financial Assistance Programs (SFAP), of the Department of Education (ED), through its San Francisco regional office, conducted a program review at Mountain States Technical Institute (MSTI), a proprietary trade and technical school owned by Ms. Delite Gaddie, from November 12-15, 1990. SFAP issued a program review report on January 11, 1991. In that report, SFAP found that for the award years 1988-89 and 1989-90, MSTI (1) failed to consistently apply its satisfactory academic progress policy (SAP), and (2) adjusted expected family contributions without adequate documentation for a number of students receiving aid under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1071 et. seq. [See footnote 1](#)<sup>1</sup> MSTI closed on July 8, 1991 and, thereafter, filed for bankruptcy protection under Chapter 11 or the bankruptcy code.

On March 14, 1991, MSTI responded to the program review findings. As related to finding #2, MSTI responded by reviewing its SAP policy against the requirements of its accrediting agency and modifying the policy to "make it less restrictive." In addition, MSTI retroactively applied the unmodified SAP policy to all students that were attending the school during the audited years. As related to finding #9, MSTI responded by reviewing the financial aid files of all students for missing documentation. The school then revised and recalculated the sixty-five (65) overawards that resulted from inadequate documentation.

Subsequently, SFAP issued MSTI a final program review determination letter, dated April 8, 1993 (FPRD) (Program Review No. 91109007), advising MSTI of its obligations related to the following: the schools closure, the liabilities owed to Title IV programs as a result of the schools' responses to the program review of November, 1990, and the school is right to appeal the FPRD.

By letter dated May 18, 1993, MSTI appealed the FPRD and SFAP referred this case to the Office of Higher Education Appeals for hearing. This proceeding is governed by Subpart H of 34 C.F.R. Part 668, as amended at 57 Fed. Reg. 47,752 (October 19, 1992). The hearing consists of the submission of written briefs by the parties and, if the hearing official determines it to be necessary, oral argument to clarify the issues and positions of the parties as presented in the parties' written submissions. 34 C.F.R. § 668. 116(b). MSTI has the burden in this proceeding of proving that the expenditures questioned or disallowed by SFAP were proper and that it complied with program requirements. 34 C.F.R. § 66.3.116(d). A hearing procedure providing for the filing of written briefs by the parties was established. SFAP filed a brief but MSTI did not. The May 13, 1993 letter of MSTI is considered as a brief.

## STATEMENT OF FACTS AND CONCLUSIONS

To be eligible to participate in Title IV, HEA programs, an institution must demonstrate that it is capable of adequately administering the program(s) under established regulations. 34 C.F.R. § 668.14. Among the standards relevant to the issue of whether an institution has an adequate administrative capacity is that the institution:

[e]stablishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, IEA program, is in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards.... 34 C.F.R. § 668.14(e)(1). The applicable regulations further require:

[c]onsistent application of standards to all students within categories of students....

34 C.F.R. § 668.14(e)(3)(v).

According to its published policy, MSTI, among other things, required its students to maintain "a minimum attendance rate of 90 percent" in order to be considered to be making satisfactory progress, and thereby eligible for financial aid. MSTI measured its school programs in terms of phases; each phase included sixty (60) hours, or approximately eleven (11) school days. Thus, if a student was absent more than once during a phase, that student failed to meet MSTI's 90 percent attendance policy. Students who failed to maintain the minimum attendance rate were placed on probation for one phase. However, such students were still considered to be making satisfactory progress during the probation period and, therefore, remained eligible for financial aid. If, after the probation period, a student had not achieved the required progress levels (e.g. raised their attendance rate to 90 percent), that student's financial aid funds were withheld by MSTI. Furthermore, the student was subject to dismissal from school.

The program review found that MSTI had inconsistently applied its SAP policy in violation of ED regulations. In this regard a number of student files were examined. For example, student #4 enrolled in a seven month word processing course scheduled to begin on January 2, 1989. The fifth phase of the program ran from March 6-20, 1989 (approximately eleven days). During that phase, student #4 was absent two (2) days - meaning the student attended only 82 percent of the days during phase five. Because the student attended less days than the 90 percent required by MSTI's published policy during phase five, the student should have been placed on probation during the following phase: from March 21st to April 3rd. During phase six, student #4 was absent four (4) days - meaning attendance at only 63 percent of the days during phase six. At that point (after Apr. 13, 1989), student #4 should have become ineligible to receive further financial aid for failure to meet MSTI's attendance policy. However, in direct conflict with its published

policy, MSTI credited the student's account with the second disbursement of \$734.00 of Pell grant monies on April 15, 1989.

Because MSTI failed to consistently apply its SAP policy, the program review required the school to retroactively apply its SAP policy to all students during the reviewed years, to develop a written procedure to ensure consistent application of the policy, and forward both to the regional office. The program review further required that all incorrectly disbursed funds be returned to the appropriate Title IV programs.

In response to the program review report, MSTI retroactively applied its SAP policy to all students for the applicable award years. This application resulted in \$99,634.31 in liabilities, arrived at by the school, comprised of the following: \$10,418.00 for the Pell Grant Program; \$37,379.64 for the Stafford Loan Program; and, \$51,070.67 for the Federal Supplemental Loans for Students Program. [See footnote 2](#)<sup>2</sup>

SFAP requests that MSTI be required to repay \$10,418.00 to ED or ineligible Pell Grant awards, and that the school pay the current holders of the loans the balances for all students identified in their response to the program review report, total of \$88,450.31. [See footnote 3](#)<sup>3</sup>

In its request for a hearing, MSTI asserts that the 90 percent attendance policy in effect during the audited years was its creation and " . . . was put in place to demand a high standard of attendance from students." ;MIST further asserts that its attendance policy " . . . makes it extremely difficult to . . . maintain satisfactory progress from a student standpoint." However, the contentions of MSTI do not provide a defense against applicable ED regulations. These regulations require consistent application of standards to all students which means that MSTI was required to enforce whatever policy it had in effect. [See](#) ,4 C.F.R. § 668.14(e)(3)(v). Just because the school's policy was purportedly created for a laudable purpose (e.q., to require "high risk" students to attend most classes) does not alter the fact that MSTI was obligated to enforce its own policy. The policy should have been applied to every student that failed to attend 90 percent of the hours of a given phase but, instead, was only applied where MSTI choose to apply it, in direct violation of ED regulations.

Furthermore, MSTI argues that because neither ED nor the school's accrediting agency, the National, Association of Trade and Technical Schools (NATTS), had an attendance requirement as an indicia of satisfactory academic progress, it's own policy "should not be used to deny financial aid claims." However, MSTI's incorrectly interprets ED regulations. ED regulations specifically require a school to apply reasonable standards to ensure that students are maintaining satisfactory progress. C.F.R. § 668.14(e). If the standards applied conform to those of the school's accrediting agency, they will be considered reasonable by ED. 34 C.F.R. § 668.14 (e)(1). However, the fact that an accrediting agency does not require something does not mean that its inclusion should not be considered as part of a reasonable SAP policy. Neither ED nor NATTS created the 90 percent attendance standard or imposed it on MSTI; nor is the policy shown to be inherently unreasonable; and the fact that neither ED nor NATTS requires such a policy has no impact on MSTI's obligation to apply its own "reasonable" standards to measure its students satisfactory academic progress. Because MSTI both created and published the 30 percent attendance policy, and regardless of whether such l policy was required by ED or

NATTS, MSTI was required to consistently apply its own policy which is not per se unreasonable.

Finally, MSTI argues that prior audits of the school found no liabilities, therefore something must have " . . . changed the way they [the auditors] handled the situation." In its request for a hearing, the school states as follows:

In the ten years her [Christina Newman, Financial Aid Director] department was audited, the various agencies and auditors never came up with any significant findings and the amount of money the school had to pay out for findings was minimal.

These statements, however, do not establish the content or prior audits or program reviews and are not shown to have a bearing on the present findings. Moreover, different periods of time were covered by the other audits. Simply, it is not shown that any previous audits looked at the same issue with the same depth of particularity or emphasis as the audit currently at issue.

## II

ED regulations require schools participating in Title I" Programs to maintain adequate student files as a measure of administrative capability. 34 C.F.R. § 668.14(f). The regulation states, in relevant part, that an institution will be considered administratively capable if it:

(f) Develops and applies In adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews (1) All student aid applications, need analysis documents . . . and eligibility notification documents presented by or on behalf of each applicant;

34 C.F.R. § 668.14(f)(1).

One need analysis document of the type referred to in the above regulation is a Student Aid Report (SAR), which is "[a] report provided to a financial aid applicant showing the amount of his or her expected family contribution." 34 C.F.R. § 690.2(c). From the SAR, the amount of grant or loan monies the student is eligible to receive is determined. 34 C.F.R. § 690.13. The term "family contribution" is defined as follows:

...the amount which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year for which the determination is made . . .

HEA § 473, 20 U.S.C. § 1087mm.

Because it helps form the basis of a financial aid award, a student's expected family contribution can only be adjusted in a limited number of circumstances [See footnote 4<sup>4</sup>](#), and, only on the basis of adequate documentation. HEA 479A(a), 20 U.S.C. §1087tt.

MSTI, as a participant in the Federal Family Educational Loans Program, was required to provide adequate supporting documentation for any changes made to its students' family contributions. Such documentation should have been included in the file of any student whose family contribution was changed from ED's determination on that student's SAR.

The program review found that adjustments were made to the family contributions of students #2 and #7 without adequate file documentation. For example, the SAR for student #2 determined the family contribution to be \$1506.00. However, the student's promissory note specifies an estimated contribution of \$119.00. Thus, student #2's family contribution was changed, but no documentation supporting that change was found in the file.

The program review required MSTI to reconcile all student files for the reviewed award years and to recalculate and adjust any awards made to students whose files did not contain adequate documentation for changes to family contributions. The review further required that a copy of the school's review be submitted to the Regional Office that conducted the review (Region IX, San Francisco, California).

In response to the program review pertaining to this finding, MSTI conducted a full file review of all student financial aid files for the reviewed years. The school reviewed a total of 2173 family contribution calculations of which 434 " . . . were revised without adequate documentation . . ." Of this 434, MSTI concluded that 65 of the revised student files resulted in overawards.[See footnote 5](#)<sup>5</sup> MSTI further responded by stating the following:

We did note that the majority of incorrectly documented Family Contribution's [sic] occurred in the 88/89 Award Year. 89/90 errors were much more infrequent as we became aware of our weakness in this area.

Finally, MSTI included in its response to the program review a copy of the results of its full file review in which overawards were detailed as negative amounts.

The FPRD accepted MSTI's full file review determinations of overawards which amounted to an \$18,679.00 liability. The FPRD instructed MSTI that this amount was due to the appropriate lenders.

In its request for a hearing, MSTI fails to adequately respond to the liability assessed against it for failure to provide adequate documentation for changes to student's family contributions.

For example, the school states that its "error factor" is 2.5 percent[See footnote 6](#)<sup>6</sup> However, ED regulations do not provide for avoidance of liabilities based on an "acceptable" amount of error. Furthermore, in making its "error factor" argument, MSTI admits that it did not have the requisite documentation to substantiate changes to students' family contributions. Thus, MSTI fails to meet its burden of establishing that it complied with program requirements as related to this FPRD finding.

MSTI also argues that it is not financially capable of paying the liability assessed in relation to this finding. However, this argument is unavailing because the purpose of the FPRD is simply to establish liabilities - not to determine an institution's ability to pay those liabilities.

## FINDINGS

Findings #2 and #9 of FPRD are upheld. In the instance of the former, MSTI failed to apply its satisfactory academic progress policy and in the case of the latter, MSTI adjusted expected family contributions without adequate documentation. Accordingly, MSTI must repay ED and lenders in accordance with the FPRD.

## ORDER

The appeal of MSTI dated May 18, 1993 is denied.

Dated this 16th day of September, 1993.

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

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*[Footnote: 1](#)<sup>1</sup> The program review report contained a total of seventeen findings, most of which have been satisfactorily resolved. Findings #2, #9, and #11 (Pell Grant payment without valid Student Aid Report) remain unresolved, however, as will be noted, MSTI appeals only findings #2 and #9.*

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*[Footnote: 2](#)<sup>2</sup> The total liability differs between MSTI's response to the program review (\$99,634.31) and the FPRD (\$98,868.31) because the school mistakenly included a \$766.00 State Student Incentive Grant in its calculation. SFAP does not assess liabilities for this program.*

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*[Footnote: 3](#)<sup>3</sup> The FPRD inadvertently states that the entire liability due is owed to ED. Only the Pell Grant Program amount (\$10,418.00) is due directly to ED. The remaining liabilities pertaining to this finding, namely \$37,379.64 for the Stafford Loan Program and \$51,070.67 for the Federal Supplemental Loans for Students Program, are due directly to the current holders of the loans.*

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*[Footnote: 4](#)<sup>4</sup> The circumstances in which a student's EFC may be recalculated are found at 34 C.F.R. § 690.14 (applicant's request), and 34 C.F.R. § 690.80(a) (clerical or arithmetic error).*

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*[Footnote: 5](#) <sup>5</sup> According to MSTI, in the remaining 369 files, although the family contributions were changed without adequate documentation, there was no resulting change to the student's award. This conclusion appears to be reached because even with the change in family contributions, these students' files showed remaining need to be met by financial aid. ED Exhibit 2 at 7.*

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*[Footnote: 6](#) <sup>6</sup> This percentage is based on the fact that 2500-3500 financial aid applications were processed during the audited years and only 65 resulted in overawards.*