IN THE MATTER OF . Docket No. 93-61-SA
.
SOUTHEASTERN UNIVERSITY, . Student Financial
. Assistance Proceeding
Respondent. .
.

Appearances: Stanley A. Freeman, Esq., of Powers, Pyles, Sutter and Verville, Washington, D.C., for the Respondent.

Russell B. Wolff, Esq., of Washington, D.C.,
Office of the General Counsel, United States
Department of Education, for the Office of Student
Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

Southeastern University (SU) is a postsecondary institution located in Washington, D.C., which participates in various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). These Title IV Programs are administered by the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED).

An institution which participates in Title IV Programs is required to have a financial and compliance audit of its Title IV programs performed by a certified public accountant (CPA) at least every two years. 34 C.F.R. § 668.23(c). ED personnel reviewed the audit report submitted by SU's CPA for award years 1989-90 and 1990-91. That auditor's report delineated several violations of Title IV requirements by SU. On February 8, 1993, a Final Audit Determination (FAD) was issued by SFAP which sought repayment of $51,670 awarded under the Pell Grant, Supplemental Educational Opportunity Grant (SEOG) and College Work Study (CWS) Programs, and the repayment of $301,925 (reduced by ED to

$98,616) to third-party lenders in the Guaranteed Student Loan Program (GSL). SU filed a timely appeal. The matter was fully briefed by the parties and Oral Argument was held on October 20, 1993.

DISCUSSION

As a threshold issue, SU argued in its brief and during oral argument that the FAD was not issued by the designated ED official and was, therefore, a nullity. I issued an Order of Dismissal on October 22, 1993, finding that the FAD had not been issued correctly and that this constituted a jurisdictional defect. On February 16, 1994, the Secretary issued a Decision in which he

reversed my Order, reinstated the FAD, and remanded the case to me for further proceedings. Upon receipt of the Secretary's Decision, I took the case under advisement for a Decision on the merits. I will discuss each issue raised by SU seriatim.

Initially, SU contests ED's authority to require it to repurchase loans from lenders in the GSL Program. Contrariwise, I find the law on this question is clear and straightforward. There is a basis in the law for ED's demand for loan repurchase. 34 C.F.R. § 682.609(a).

Next, SU disputes ED's authority to use an actual loss calculation to establish liability. Strangely, it appears clear, and not contested by SU, that the Secretary may demand the return of all Title IV funds which were improperly accounted. Yet, here, ED has only demanded that which it calculates as its true out-of-pocket loss. They do this by applying the cohort default rate of the school to the questioned expenditures, and the result is what they claim to be their best calculation of the actual loss.

In addition to its claim that ED has no authority to project liability on an actual loss basis, SU complains that ED applied SU's 1990 cohort default rate (24.3%) while the 1991 rate is lower (19%). In response, ED points out that the 1990 rate was the latest available when the calculations were made, and, since the audit period covers two award years ending in June 30, 1991, the 1990 rate is the appropriate one to apply. I find that ED's calculation of liability was correct, reasonable, and clearly supportable. See In the Matter of Commercial Training Services, Inc., Docket No. 92-128-SP, U.S. Dep't of Education (August 4, 1993).

SU also complains that ED has double-counted liabilities in instances where there were multiple findings regarding the same students. ED responds that there was no double-counting;

although there were multiple findings in certain instances, on each such occasion, the liability was only counted once. After examining the evidence, including the charts provided by Counsel for SFAP, I find that there was no double-counting.

Next, the parties dispute whether an institution should be held accountable for failure to follow its own procedures when those procedures are more restrictive than those required by ED. This question arose because SU's internal procedures required that a student's high school diploma had to be included in his or her student aid file to establish eligibility, whereas ED has no such absolute requirement. Under ED rules, other evidence to establish that the student is a high school graduate, including student self-certification, is acceptable. The auditors determined that, in some instances, no such high school diplomas were included in the student aid files and, as a result, those students were ineligible to receive federal student financial assistance. SU defends that the school's internal requirements which exceed ED's requirements should not be enforced. ED, on the other hand, argues that eligibility is determined under the institution's stated policies, and ED's requirements are a minimum, below which the institution's policies may not fall. This dispute is of academic interest only because even if we accept that the inclusion of a diploma in the student aid file was not required, SU still has not provided acceptable alternate supporting documentation of the student's eligibility.

Finally, the parties dispute whether the cost of attendance of students was properly calculated by SU, so as to support the extent of the Title IV aid which was provided. ED argues that SU did not have a standard budget to be used to calculate the student's cost of attendance and that SU used different costs of attendance on different documents. Also, there were no records available to show how the cost of attendance was calculated. It is quite clear that an institution must have evidence of how the cost of attendance was calculated insofar as individual students are concerned, as well as a standard budget. 34 C.F.R. § 682.610(b)(4) and 34 C.F.R. § 690.82(a)(5). It is also abundantly clear that SU did not comply with these requirements.

FINDINGS

I FIND the following:

Southeastern failed to maintain back-up documentation, as required to establish the eligibility of student financial assistance recipients;

Southeastern failed to meet its burden of establishing that the Title IV funds in issue were properly accounted for;

Southeastern's liability amounts to $51,670 to ED and $98,616 to lenders in the Guaranteed Student Loan Program.

ORDER

On the basis of the foregoing it is hereby--

ORDERED, that Southeastern University, repay to the United States Department of Education the sum of $51,670 for Pell Grants awarded to ineligible students, and $98,616 for ineligible loans in the Stafford and Supplemental Loans to Students programs.

Ernest C. Canellos

Issued: June 22,1994
Washington, D.C.