

UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, DC. 20202

In the Matter of

TREBAS INSTITUTE FOR  
RECORDING ARTS,  
Respondent.

Docket No. 94-121-SP

Student Financial  
Assistance Proceeding

PCRN: 92409060

Appearances: Kelli J. Crummer, Esq., Dow Lohnes & Albertson for Trebas Institute for  
Recording Arts [1/](#)

Paul G. Freeborne, Esq., Office of the General Counsel, United States Department of Education,  
Washington, D.C., for Student Financial Assistance Programs. [2/](#)

Before: Edward J. Kuhimann, Administrative Law Judge [3/](#)

**DECISION**

On May 25, 1994, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a Final Program Review Determination (FPRD) finding that during the award years 1990/91 and 1991/92 Trebas Institute for Recording Arts violated Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. ? 1070 et seq. On July 11, 1994, respondent appealed the determination on Findings 2, 3, 8, 9, 10, 11, and 13.

In Finding 2, SFAP found that the regular student status or eligible program enrollment was not documented for students 1,2,3,5,6, 7, 8,9, 10, 11, 17, 18, 19, and 20. The enrollment agreements on file for those students identified the students' request to enroll in the Recording Arts and Sciences program, which consists of 30 weeks (two terms), 12 hours per week, for a total of 360 hours. The respondent's "Notice of Termination" form identifies these students as having graduated from the Recording Arts and Sciences program, although SFAP found that a diploma or certificate is not given for the completion of the program. Officials at respondent told SFAP that the Recording Arts and Sciences program was not designed to prepare students for employment, but instead was intended to prepare students for any one of three second year programs. SFAP found that there was no documentation on file to indicate that the students studying Recording Arts and Sciences were enrolled or intended to enroll in one of the second year programs.

SFAP states in the FPRD that it is not clear whether the Recording Arts and Sciences program was separately accredited. Respondent's accrediting body, Accrediting Council for Continuing Education and Training (ACCET), in correspondence to respondent dated December 15, 1989, identified the Recording Arts and Sciences program as a first year program of 24 semester hours; in additional correspondence, dated December 20, 1991, ACCET identified it as a 24 credit hour semester program without qualifying it as a first year program. Citing 34 C.F.R. §§ 600.10, 668.2, and 668.7 (1990), SFAP found that the Title IV financial aid funds were improperly disbursed to the students enrolled in the Recording Arts and Sciences program during the award years at issue.

After respondent conducted a file review, according to SFAP specifications, SFAP found the documentation insufficient to meet the requirements of the regulations. SFAP stated that the documentation was insufficient because there was no indication in the files of the students listed in the sample that they were enrolled, or intended to enroll, in one of the specialization options for the purpose of obtaining a degree or certificate that would eventually lead to employment in a recognized occupation. The file review found 172 students enrolled in the Recording Arts and Sciences program with no documentation to show the students' intended to enroll in a second year specialization program.

Respondent submitted letters from ACCET dated September 18 and December 23, 1992 stating that respondent was approved to offer a two-year program consisting of Recording Arts and Sciences courses with a specialization option in the second year in Recorded Music Production, Audio Engineering Technology, or Recorded Music Production/Audio Engineering Technology. Consistent with its accreditation, respondent maintains that the Recording Arts and Sciences program is a two-year program in which the first year is made up of general Recording Arts and Sciences courses and the second year consists of three possible areas of specialization, record producer, sound engineer or music industry management. <sup>4/</sup> Those specialties, respondent indicates, are the ones listed in its amended Institutional Eligibility Notice issued by the Department on February 12, 1993.

Respondent urges that SFAP's reliance on 34 C.F.R. § 600.10 (1990) is misplaced. It reads that section as applying to subsequent additions to an educational program. Respondent maintains that the Recording Arts and Sciences program is not a subsequent addition to its educational program, but instead is an umbrella program that varies in accordance with the student's specialization. It maintains that that has always been the case and that the specialization areas are the same ones that the Department granted eligibility to in 1987. Respondent states that it has always treated the first year of the Recording Arts and Sciences program as part of a two year program.

Respondent also urges that it is not in violation 34 C.F.R. § 668.2 (1990). Respondent argues that a student's intent to complete a course for a degree or certificate is not relevant in determining compliance with § 668.2 "as long as the [respondent] in accepting a student for enrollment did so for the purpose of the student obtaining the [Recording Arts and Sciences) Certificate." Respondent represents that it offered no non-certificate programs; therefore, all students who signed up for Recording Arts and Sciences courses were considered to be two-year students and candidates for a certificate. To demonstrate that claim, it points to its catalog and advertising

which refer to its two-year specialized program that results in the student receiving a certificate. Respondent also represents that admission representatives told all enrolling students that the program took two years. It claims that the admission representatives would deny admission to students who would not verbally commit to completing a two year program.

Respondent relies on the Department's "Dear Colleague Letter", Gen-88-13, which states that no additional steps need be taken to determine that a student is enrolled in an eligible program, if the student is a regular student and all of the institution's programs qualify as eligible programs. Respondent argues that because all of its course programs were certified by the Department as eligible, it did not have to maintain "documentation of student purpose other than the student's enrollment." The regulations and statute, respondent believes, do not conflict with its view that no documentation of student purpose had to be kept. But, it argues, if § 668.2 could be read to require documentation of student purpose, SFAP must accept any form of documentation of that intent. It maintains that documentation that shows a student's actual attendance during the second year is a sufficient indication of intent. Respondent represents that it has second year enrollment agreements for many of the 172 students identified in the file review. It also asserts that for the original 25 student sample it has financial aid forms, statements of intent, requests to have financial aid disbursements applied to the second year and grade reports which demonstrate an intent to attend to receive a certificate. Respondent rests on its argument that it need not document intent. However, it requests that, if that argument fails, it be provided with an opportunity to submit detailed documentation of the intent of the 172 students. It did not introduce that information in this proceeding.

To demonstrate student intent, respondent submits a form on which respondent's admissions official rated each student's "serious mindedness" and his or her "sense of commitment." Respondent represents that a component of those assessments was the student's verbal commitment to the two year certificate. Respondent also conducted a survey of the 172 students who enrolled in the Recording Arts and Sciences program to determine if they intended to obtain a two year certificate. It received 10 responses and all 10 former students indicated on the questionnaire that they intended to attend for two years.

Respondent asserts that the liability assessed by SFAP is inflated. Respondent argues first that SFAP should have reduced its liability by excluding those students who, regardless of their professed purpose, actually did enroll in the second year of the program. Second, respondent argues that it has not used the Title IV funds for uses inconsistent with the Act, such as over-awards, and therefore there should be no repayment liability since no actual damage resulted. Third, respondent characterizes its liability as a "forfeiture since the [respondent] would be required to forfeit funds to which it currently has a right." A forfeiture of disbursements made prior to May 25, 1989, is barred by a statute of limitations, it argues.

Fourth, respondent maintains that even, if the Recording Arts and Sciences courses were ineligible for loans, the Federal Family Education Loans (FFEL) and SLS loans were permissible because the students took courses which were necessary for the second year specialization courses. Fifth, the respondent asserts that there is no legal authority for SFAP's claim that respondent should have to pay interest and special allowance payments (ISA). Sixth, respondent urges that the average quarterly balance method used to compute ISA is no more established by

regulation than the "simplified formula" which the Secretary found without authority in In re Berk Trade and Business, U.S. Dept. of Educ., Docket No. 91-5-SP (Sec. of Education, March 19, 1993). And seventh, respondent asserts, the liability figure must also be reduced by student refunds it made and loans repaid by students.

SFAP recognizes that the respondent offers students a two-year course which results in a certificate in Recording Arts and Sciences with an area of specialization. SFAP represents that the records of those students are different from the one-year Recording Arts and Sciences students. SFAP points out that students who were enrolled in a two-year program signed contracts for their "first year" that expressly referred to the two-year program they preferred, which included record production and audio engineering. However, SFAP points out, the overwhelming majority of students who attended respondent and only signed a contract for the Recording Arts and Sciences courses without designating a second year of specialization, only attended for one year. SFAP argues that because the respondent does not award a certificate or diploma for the completion of the one-year Recording Arts and Sciences curriculum and it is not designed to prepare students for any recognized occupation, it is an ineligible program within the meaning of 34 C.F.R. § 668.8 (1990). Therefore, those students who took only one year of Recording Art and Sciences courses were ineligible for Title IV student financial assistance. 34 C. F.R. § 668.7 (a) (1) (1990).

SFAP urges that respondent's Recording Arts and Sciences course was "generally" a sham. It was, it argues, "almost without exception" the case that respondent's students who signed a contract for a two-year program attended into a second year, while those who did not sign such a contract did not attend for a second year. SFAP points out that respondent had no response for its exhibit demonstrating that fact. SFAP maintains that while respondent did conduct a survey to show that students who signed a contract for only one year intended to attend for a second year, respondent conducted the survey itself and measured only past subjective intentions of 10 out of 172 students. SFAP contrasts respondent's study to the comprehensive tabulation in SFAP Exhibit 10 of all Recording Arts and Sciences students who enrolled for a single year program. [5/](#)

Respondent has not submitted reliable evidence to rebut SFAP's claim of liability for Finding 2. Respondent did not submit reliable evidence that the students in the sample held regular student status or eligible program enrollment. The SFAP reviewers found that respondent had no documentation on file to indicate that the students in Recording Arts and Sciences enrolled or intended to enroll in one of the second year programs. In fact, SFAP found that the respondent's "Notice of Termination" form identifies the one-year students as having "graduated" from the Recording Arts and Sciences program.

Respondent's file review compiled a list of 172 students who enrolled only in the Recording Arts and Sciences program with no documentation to show their intention to enroll in one of the second year specializations. Students who signed enrollment contracts with respondent who intended to continue beyond the first year indicated that fact by designating an area of specialization on their enrollment contract, but those students who signed up for the Recording Arts and Sciences program without a designated specialization did not. SFAP found that this was the case for the "overwhelming majority" of respondent's students. Respondent does not award a

certificate or diploma for the completion of the one-year Recording Arts and Sciences curriculum and it is not designed to prepare students for any recognized occupation. 6/ Therefore, it is an ineligible program within the meaning of 34 C.F.R. § 668.8 (1990). And those students who took only one year of Recording Art and Sciences courses were ineligible for Title IV student financial assistance. 34 C.F.R. § 668.7 (a) (1) (1990).

Respondent points to several documents to demonstrate that students who signed up for only the Recording Arts and Sciences program did intend to complete two years. While respondent surveyed all 172 students on the file review list to determine if they intended at the start of the first year to continue for two years, it did not receive a creditable response; only ten students answered the questionnaire. Citing its exhibit C, attachment 24, respondent argues that student number 6 in the SFAP sample intended to enroll for the second year. Attachment 24 is purportedly a request to respondent by student number 6 to hold credit in her account to be applied to the second year. The reviewers were unable to locate documentation that student no. 6 was a regular student or was enrolled in an eligible program. Her enrollment agreement, according to the FPRD, indicated that she was only enrolled in the Recording Arts and Sciences program. Attachment 24 has a line for the student to sign to request that the school hold funds for the next year but the line reserved for the student's signature on Attachment 24 is initialed "DC", which appear to be the initials of Denise Coyle, who states in her declaration in respondent's exhibit C that she oversees respondent's Financial Aid Office. The evidence submitted with regard to student no. 6 is not credible.

The FFEL application of student number 10 submitted by respondent, also fails to refute the findings of the reviewers. The FFEL application indicates that student 10 intended to complete a two-year program. But the representation on the form that student 10 would attend from 10/90 to 12/91 was not made by him, but again by Ms. Coyle, respondent's financial aid officer.

Respondent argues that the liability assessed by SFAP is inflated. But the reasons it gives are either a twist of logic or factually and legally unsupported. Respondent argues that its liability is a forfeiture because it would need to forfeit funds to which it currently has a right. But the lesson of this case is that respondent received funds to which it had no right. Liability was assessed only for Title IV funds awarded or loaned to students who were not enrolled in an eligible program. Respondent maintains that it damaged no one since it made no over awards and, therefore, it has no liability. Nothing could be more removed from the facts of record. Respondent disbursed Title IV funds to students enrolled in an ineligible program; those actions violated the federal statute governing the disbursement of Title IV funds, and the regulations implementing the statute. Respondent's arguments about ISA payments are equally unconvincing. Insofar as respondent is claiming that it did not receive the Title IV money because of refunds it made to students and that it should not have to repay loans already repaid, it is correct. Those amounts should be excluded from respondent's ultimate liability. It should also be noted that while SFAP characterized respondent's one year program as a sham, the record does not support that characterization.

SFAP determined in Finding 3 that respondent failed to document the independent student status of eight students. It assessed repayment liability with regard to four of them, 12, 16, 46, and 50. There was no repayment liability for the remaining students because the amount owed was already included in Finding 2. Respondent does not dispute liability for student 12. The reviewers did not find a 1989 tax return for student 16 and it did not find documentation that the student's parents did not claim her as dependent. Respondent submitted a work copy of student 16's 1989 tax return, which indicates income in excess of \$4,000 but it has not demonstrated that the student's father did not claim her as dependent. For student 46, respondent relies on a statement of the Social Security Administration which indicates that the student's parents did not repay any benefits. Respondent argues that that demonstrates that they did not file an income tax return and did not claim student 46 as a dependent. Respondent has not established the inference. It is possible that the student's parents had income that was taxable but that did not affect Social Security payments. Respondent claims that student 46 was a case of special circumstances, but it does not explain why that is the case. The reviewers found that student 50 did not submit signed returns demonstrating income in excess of \$4,000 and only his mother stated that she did not claim him as a dependent. Respondent has not shown anything in the file of student 50 or the regulations that would change the judgement that the school did not document that student 50 was independent. Respondent has not met its burden with regard to Finding 3.

### III

In Finding 8, SFAP found that respondent had not made refunds to the appropriate Stafford/SLS lender for student 22 within the time period required by Federal regulations. Respondent's file review and the program reviewer's review of backup identification ultimately identified, including student 22, 20 students for whom refunds had not been paid. Respondent was not assessed liability for 12 of these students because to do so would only be to duplicate liability already found under Finding 2. With regard to those students that respondent is liable only under Finding 8, respondent disputes liability for students 64 and 79.

SFAP found that student 64 withdrew from respondent as of August 13, 1993, and pursuant to respondent's refund policy, respondent owed a refund of \$1899.69 to the SLS lender. The document which respondent submitted in its request for review shows that student 64 owed respondent \$472.31. SFAP points out that the document submitted by respondent is new and does not coincide with the account of student 64 originally produced by respondent. SFAP points out that respondent does not explain how the new document is different from or more reliable than the old one. SFAP argues that the new document appears to have been altered with liquid paper and that it was generated to change the outcome after the fact. Respondent has not replied to this accusation. Student 79, SFAP found, withdrew from respondent as of January 23, 1992, after attending no more than 15 weeks of his 30 week program. SEAP found that even though student 79 did not attend respondent for the second payment period, respondent disbursed to his account a second Stafford Loan of \$1,230 and a second SLS loan of \$1,975. SFAP concluded that these amounts were owed to the lender. Respondent argues that student 79's record shows that he attended 30 weeks of the program and therefore he was entitled to the second payment. The documents originally provided to SFAP indicate that student 79's last day of attendance was January 23, 1992, and not May of 1992, which respondent indicates on the new document. Without some explanation of why the documents for students 64 and 79 differ from the original

provided to SFAP and why the second document is more reliable, respondent has not met its burden of proof Finding 8 is affirmed.

#### IV

In Finding 9, SFAP found that respondent disbursed a second payment of Pell Grant funds prior to the program midpoint to a number of students. ultimately, SFAP concluded that for student 59 there was no liability because that student subsequently attended past the midpoint, and with regard to the others SFAP stated that respondent's liability had been included in Finding 2. Respondent argues that student 60 also attended past the midpoint. Respondent has not provided convincing proof that the original finding is inaccurate. Finding 9 is affirmed.

#### V

Respondent has no liability under Finding 10 because it is already liable for the students that make up Finding 10 under other findings. Respondent asserts that its Exhibit I demonstrates that the students in question continued to attend and completed a sufficient amount of the program to have earned the second loan disbursement. Respondent does not explain how the records submitted in Exhibit I differ from those given Department reviewers and the certified public accountants who conducted its file review. In order to refute SFAP's finding, respondent must at least explain why the documents it now relies on are more reliable than those which it originally provided during the review. Not only has respondent failed to meet that burden, but it has not responded to SFAP's argument that it altered the original evidence to make its case. Finding 10 is affirmed.

#### VI

Respondent also has no liability under Finding 11 because it is already liable under other findings for the payments cited. Respondent maintains that 15 of the 21 students did attend for more than 30 days and were eligible for loans. SFAP responds that for student 24, respondent's "Notice of Termination" and "Attendance Record" indicate that she did not attend more than 30 days. With regard to the remaining 14 students which respondent disputes, SFAP states that it relied on respondent's file review conducted by certified public accountants. SFAP points out that respondent's Exhibit J presents only the attendance reports without any of the related documents, including "Notices of Termination, " that would normally be in the same file as the attendance records. Moreover, SFAP points out, there is no means of testing the differences between the auditor's report and the documents submitted by the respondent in Exhibit 3 because respondent has not provided the work papers underlying the auditor's report. Respondent has not explained the discrepancy between the evidence in its file review and its appeal and, therefore, it has not met its burden of refuting Finding 11. Finding 11 is affirmed.

### FINDINGS

1. Respondent has not met its burden of establishing that the students in the Recording Arts and Sciences program were enrolled in an eligible program. Its institutional liability is as assessed in the FPRD.

2. Respondent has not documented that the students cited in Finding 3 had independent student status.
3. Respondent has not rebutted Finding 8 which found that it had made late GSL refunds. It has not provided reliable documentation that it made the refunds timely.
4. Respondent made Pell grant disbursements prior to the midpoint; it has not rebutted the showing made in FPRD
5. Respondent has not met its burden in responding to Finding 10 (which found that it did not follow the loan attribution process), Finding 11 (which found that it violated the delayed delivery requirements for first year undergraduate borrowers of Stafford and or SLS loans), and Finding 13 (which found that student files did not include refund calculations for Title IV programs).
6. Respondent failed to convincingly establish that it is not liable for the amounts listed in the FPRD It must pay the amounts assessed.

#### ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Respondent Institute of Recording Arts pay the amounts found due in the foregoing findings, less an appropriate credit for loans that have already been repaid and for refunds that have been made.

Edward J. Kuhmann  
Administrative Law Judge

Date: May 8, 1996

#### SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

Mr. David Leonard, President  
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1/ Ms. Crummer filed the appeal request for the respondent, but, on October 20, 1994, she withdrew as counsel and requested that the appeal and the attached exhibits be considered as the respondent's brief in evidence in this matter. No other person entered an appearance for the respondent.

2/ Paul G. Freeborne was substituted for James T. O'Neill on May 18, 1995, when Mr. O'Neill left the Office of the General Counsel.

3/ On August 18, 1994, this case was assigned to Administrative Judge Richard I. Slippen; it was reassigned on March 13, 1996.

4/ Respondent submits a blank school certificate which it represents is issued to students who have completed a two year program in what is designated on the certificate as "Recording Arts and Sciences" with a blank line to list a specialization.

5/ SFAP urges that there is no merit to respondent's arguments that the assessment of liability is inflated. SFAP points out that the statute of limitations applies only to forfeitures and fines which are not at issue here. SFAP defends its calculation of interest and special allowance on loans to ineligible student borrowers under the Stafford and SLS programs by pointing out that the interest rate it used is statutory and the remainder of the factors are estimates of typical special allowance costs of loans made to students at proprietary trade institutions. SFAP argues that its formula is reasonable and that mathematical precision is unnecessary. It notes that respondent has not provided any alternative system to compute interest and special allowance liability.

6/ Respondent has made conflicting representations about whether students who complete the one-year Recording Arts and Sciences courses could find employment. It told SFAP reviewers that the courses in the first year of Recording Arts and Sciences did not prepare students for employment and in its appeal it argues and submits a declaration of its financial aid officer that the first year of courses prepared students for positions as assistants in any of 20 jobs titles in the music industry or as a second engineer.