UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of **Docket No. 94-145-SA**

Catherine College, Student Financial Assistance Proceeding

Respondent. ACN: 05-10015

Appearances: Stanley A. Freeman, Esq., Powers, Pyles, Sutter & Verville, P.C., Washington, D.C., for Catherine College.

Edmund J. Trepacz, II, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

On June 27, 1994, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final audit determination (FAD) finding that Catherine College violated various program requirements governed by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq*. According to SFAP, from August 23, 1990, through June 30, 1991, Catherine College improperly disbursed to its students $230,138 in Federal student financial assistance funds by inflating the course length of the institution's programs. In addition, SFAP determined that during the same period, Catherine College improperly awarded its students $679,550 in Pell Grant funds by prematurely disbursing Pell Grant payments before the students had completed the requisite course work accompanying the prior Pell Grant award. Finally, SFAP seeks recovery of $3,880 for an improper student loan disbursement for failure to document the basis of the loan awarded.

I

The material facts of this case are uncontested and clearly established.See footnote 1 *1* During the period at issue, Catherine College offered postsecondary education programs in travel, accounting, word processing, computer training, and secretarial skills. The courses offered by the institution ranged from principles of accounting to telephone and mail procedures. Prior to August 1990, Catherine College's programs varied in course length from 1080 clock hours to 1300 clock hours. Students could enroll in Catherine College to attend classes in an evening

program, or attend classes in the day. On March 8, 1990, Catherine College's accrediting agency, the Association of Independent Colleges and Schools (AICS), approved Catherine College's request to convert its measurement of course length from clock hour to credit hour.

In August 1990, Catherine College converted its measurement of course length from clock hour to credit hour. In doing so, Catherine College altered neither the times its classes were held, nor the number of weeks those classes met. Although no changes to the institution's programs were undertaken, under Catherine College's new credit hour measurement, the length of the institution's programs significantly expanded. Catherine College informed SFAP of its conversion from a clock hour institution to a credit hour institution. In response, SFAP requested the institution to document that the institution's state licensing agency had authorized the institution to operate as a credit hour institution and to "explain in detail the additional instruction that students will receive from the expanded (converted) curricula." Subsequently, by letter, dated September 5, 1990, SFAP "update[d]" Catherine College's eligibility to participate in Title IV programs.See footnote 2 *2*

In the present proceeding, SFAP claims that Catherine College's conversion from clock hour to credit hour was improper and resulted in the institution awarding excess Pell Grants to its students. In support of its position, SFAP relies upon the educational community's generally accepted definition of "semester hour," which routinely includes two hours of outside preparation for each hour of classroom instruction, and argues that Catherine College should be bound by this definition in its conversion. In SFAP's view, the inherent flaw in Catherine College's conversion is the institution's failure to prove that the additional length of its programs is supported by an increase in classroom instruction or the additional need for students to spend time outside of the classroom to prepare for classroom instruction. SFAP argues that as a clock hour institution, Catherine College did not require students to engage in outside preparation prior to its conversion and, therefore, should not be permitted to do so as a credit hour institution unless the content of the institution's programs are changed or the institution can otherwise justify using a conversion measurement that includes outside preparation. To bolster its position, SFAP relies upon the Secretary's decision in *In re Webster Career College, Inc.,* Dkt. No. 91-39-SP, U.S. Dep't of Educ. (July 23, 1993) (*Webster)*. In *Webster*, the Secretary affirmed the administrative law judge's finding that AICS failed to exercise its professional judgment, as an accrediting agency, when AICS approved Webster Career College's conversion from a clock hour to credit hour institution. In adopting the judge's finding, the Secretary held that significant variations in the measurement of course length resulting from a clock hour to credit hour conversion without changing the educational content of the program being measured is "inherently illogical." SFAP argues that *Webster* controls the outcome in this case and, as such, requires the tribunal to reject the accrediting agency's approval of Catherine College's clock hour to credit hour conversion.

In its defense, Catherine College argues that SFAP's allegation that the institution improperly converted the length of its programs from clock hour to credit hour has no basis in statute or regulation and that SFAP's reliance on *Webster* is misplaced. According to Catherine College, its conversion from clock hour to credit hour served the purpose of securing for its students credit for outside preparation, which they were required to perform but which was not accounted for

under preexisting clock hour definitions. Catherine College argues that, by definition, the institution could not measure the outside preparation of its students in its calculation of clock hours because clock hours only measure the amount of classroom instruction that occurs in a given course. In the institution's view, students attending clock hour institutions like Catherine College were exposed to excessive hardship as a result of not being able to obtain academic credit for the same amount of classroom preparation undertaken by students attending credit hour institutions that offer programs with substantially the same course content.

In addition, Catherine College points out that AICS reviewed its conversion from a clock hour to a credit hour institution and determined that the institution had complied with the accrediting agency's standards.See footnote 3 *3* Catherine College contends that *Webster* is inapposite because in

this case, unlike in *Webster*, the record demonstrates that the institution undertook all the steps required by AICS when it converted from clock hour to credit hour, and that AICS exercised its professional judgment in approving Catherine College's conversion. Instead of relying on *Webster*, Catherine College directs the tribunal's attention to *In re Associated Technical College*, Dkt. No. 91-112-SP, U.S. Dep't of Educ. (February 23, 1993),See footnote 4 *4* wherein the administrative law judge held that SFAP's position that clock hour institutions are under an essentially immutable requirement to measure course length in an equivalent fashion before and after undergoing a clock hour to credit hour conversion was unsupported by Title IV regulations.

It is abundantly clear that both *Webster* and *Associated Technical College* are relevant to the resolution of the issue before me. In this respect, I find SFAP's contention that a mathematical equivalency formula should be applied to evaluate the reasonableness of Catherine College's clock hour conversion must be rejected. Clearly, SFAP's position, if upheld, would have the effect of locking many clock hour institutions seeking to convert to a credit hour institution into a singular system of course measurement: never permitting such institution's students to obtain the benefit of being awarded credit for outside classroom preparation in circumstances where the course content does not differ in any significant manner from courses offered by pre-existing credit hour institutions.See footnote 5 *5* There is no basis in the case law of this Department or in the provisions of Title IV requiring this result.

More important, I find that Catherine College has sustained its burden of proof by making a compelling showing that its conversion was reasonable under the standard enunciated by the Secretary and complied with the requisite statutory requirements.See footnote 6 *6* Although the Secretary affirmed *Associated Technical College* without a written opinion, the Secretary addressed this issue directly in *In re Baytown Technical School, Inc.*, Dkt. No. 91-40-SP, U.S. Dep't of Educ. (April 12, 1994) (*Baytown*). In *Baytown*, SFAP alleged that the institution improperly converted

its clock hour programs to credit hour programs in order to inflate the number of hours offered and, thereby, make Baytown Technical College eligible for additional Pell Grant funding. Rejecting SFAP's position, the Secretary recognized that the Department had not promulgated any regulation requiring institutions that seek to convert from clock hour to credit hour institutions do so by maintaining an equivalent ratio of clock hours to credit hours. The Secretary

cautioned SFAP that he was "hard[]pressed to ascribe a regulatory violation on the basis of regulatory language that does not squarely address this issue," and held that institutions are free to make clock hour to credit hour conversions as long as the conversion is not unreasonable.

Similarly, in *Webster*, the Secretary established that the Department's role in evaluating the propriety of an institution's conversion from clock hours to credit hours is limited to determining whether the conversion was unreasonable, and that the Secretary held where a clock hour to credit hour conversion entitles an institution to increase its level of participation in Title IV programs, the Department has an obligation to assess whether the conversion was justified. In doing so, the Secretary advised, SFAP should consider whether, in approving the institution's conversion, the accrediting agency exercised its professional judgment. In both *Baytown* and *Associated Technical College* the Secretary adopted the administrative law judge's findings that adherence to a mathematical equivalency test for assessing clock hour conversions is not required by Title IV regulations, and that the record in each case contained substantial support showing that the accrediting agency exercised its professional judgment in approving the institutions' conversions from clock hour to credit hour institutions. In *Webster*, however, the administrative law judge found, and the Secretary agreed, that AICS, did not exercise its professional judgment in approving the institution's conversion because AICS' review team members failed to follow the accrediting agency's standard procedures when reviewing the institution's measurement of its clock hour conversion.

In stark contrast to the institution in *Webster*, Catherine College presented substantial and compelling evidence that its accrediting agency thoroughly reviewed its clock hour conversion, and that the institution followed the normal procedures in obtaining approval for its conversion from the appropriate licensing and accrediting authorities. In March 1990, Catherine College submitted its application for approval of its conversion to the Illinois State Board of Education, Department of Recognition and Supervision. In that application, the institution indicated in substantial detail the programs, courses, and number of classroom and lab hours relating to its credit hour conversion.See footnote 7 7 Clearly, this information was submitted to the state in a manner of

sufficient detail so that the state could, and did, license Catherine College to operate within the state as a postsecondary credit hour institution. Similarly, the institution submitted a detailed application for conversion to its accrediting agency in February 1990. On March 8, 1990, AICS issued an approval letter to Catherine College stating that the institution's calculations for its conversion from clock hour programs to credit hour programs were "within acceptable guidelines of the Accrediting Commission." There is no probative evidence in the record that either the State of Illinois or AICS granted approval of Catherine College's conversion in absence of professional judgment. To the contrary, Catherine College's submissions were substantially detailed enough to conclude that the state, AICS, and ED, in its notice of eligibility, all acted reasonably in approving Catherine College's conversion from a clock hour to a credit hour institution.

II

According to SFAP, program auditors randomly selected 50 student files and discovered that 13 of the files indicated that Catherine College had disbursed additional Pell Grant payments to students before they were eligible to receive the subsequent payment. On the basis of this finding, SFAP requested Catherine College to perform a full review of its files to determine whether the institution had made additional improper disbursements of Pell Grant funds. Instead of providing SFAP with a full file review, the institution attempted to document the appropriateness of its disbursements to the 13 students and further challenge SFAP on whether Title IV regulations actually precluded subsequent payments to clock hour students in the manner disbursed by Catherine College. In response, SFAP projected a liability in the amount of $679,550 based upon an estimation that Catherine College had made improper disbursements to 26% of its students during the period at issue.

It is abundantly clear that throughout the period at issue Catherine College was not authorized to disburse subsequent Pell Grant payments until its students had completed the required clock hours for which they had been paid a prior Pell Grant award. 34 C.F.R. § 690.75 (1990). In this regard, I am unpersuaded by Catherine College's arguments that SFAP's allegation is only supported by Department policy, but not law. Nor am I persuaded that Catherine College's evidence substantiates its claim that the institution's excused absence policy permitted it to disburse Pell Grant funds to students who had failed to attend class for over 25% of the program. As SFAP points out, these students were not maintaining satisfactory progress even under the institution's own guidelines as spelled out in its course bulletin. Consequently, the

issue before me is whether SFAP has provided sufficient basis for requiring the repayment of over one half million dollars in Pell Grant funds on the basis of documented improper disbursements for a sample of 13 students amounting to $13,950.

Under the unique facts before me, I find that SFAP's proposed calculation of liability is based upon sufficient foundation requiring Catherine College to repay $679,550. The nature of the enforcement of Title IV programs, through the use of program review and audit determinations, creates the need for institutions to cooperate with SFAP by providing the agency with complete file reviews when that information is needed to determine whether any, if not all, Title IV funds disbursed to the institution were spent contrary to statutory and regulatory requirements. *See, e.g., In re Selan's System of Beauty Culture,* Dkt. No. 93-82- SP, U.S. Dep't of Educ. (December 19, 1994). Although Catherine College may have had a reasonable explanation for failing to provide SFAP with the requested documentation, no such reason was proffered in this proceeding. Catherine College's failure to provide SFAP with the data requested regarding the institution's disbursement of Pell Grant funds, undercuts Catherine College's position that the funds were properly disbursed.

III

Under Title IV, an institution may permit a dependent student to borrow financial assistance funds under the Supplemental Loan to Students (SLS) program if the institution determines that extenuating circumstances will likely preclude the student's parent(s) from borrowing under the Federal PLUS loan program and that the student's family is otherwise unable to provide the expected family contribution toward the student's postsecondary education expenses. 20 U.S.C. §

1078-1. In making its determination that a dependent student should be permitted to borrow funds under the SLS loan program, an institution is required to maintain records documenting the circumstances supporting its determination.

In response to the draft audit report, Catherine College provided documentation supporting its determination to certify SLS loan funds for 11 of 12 students who had missing documentation in their student files at the time of the audit. For the remaining student, for which the institution certified an SLS loan in the amount of $3,880, Catherine College failed to present documentation of extenuating circumstances. Accordingly, I find that Catherine College must reimburse the Title IV lender $3,880 for this improper disbursement.

FINDINGS

1. Catherine College has sustained its burden of proving that its clock hour conversion was reasonable under the standard enunciated by the Secretary and met the requisite statutory requirements.

2. Catherine College improperly disbursed additional Pell Grant payments to students

before the students were eligible to receive additional Pell Grant funds. On the basis of this finding, I find that SFAP's proposed calculation of liability is based upon sufficient foundation supporting requiring Catherine College to repay ED $679,550 in Pell Grant disbursements.

3. Catherine College improperly disbursed $3,880 in SLS loan funds to a dependent student without maintaining the proper documentation in its student files showing that extenuating circumstances precluded the student's parent(s) from borrowing under the PLUS loan program.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Catherine College pay to the United States Department of Education the sum of $679,550 and reimburse $3,880 to the appropriate Title IV lender.

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Ernest C. Canellos
Chief Judge

Dated: March 6, 1996

SERVICE

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

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Footnote: 1 *1 Each party has moved to exclude from the record exhibits filed after the submission of prehearing briefs. Those motions are denied. In accordance with the Secretary's decision in In re Baytown Technical School, Inc., Dkt. No. 91-40-SP, U.S. Dep't of Education (April 12, 1994) and consistent with my obligation to provide the parties with a fair hearing, I find no grounds for finding that the submissions of the parties should not be duly considered in my fact finding in this case.*

Footnote: 2 *2 The letter, an Institutional Eligibility Notice, apparently recognized that Catherine College had converted its measurement of program length from clock hour to credit hour effective August 23, 1990. Toward the top portion of the letter the caption reads "ELIGIBILITY UPDATE. CONVERSION FROM CLOCK HOURS TO SEMESTER CREDIT HOURS, EFFECTIVE: AUGUST 23, 1990."*

Footnote: 3 *3 Catherine College also urges that SFAP should be estopped from raising the clock hour conversion issue subsequent to its issuing the institution an institutional eligibility notice. It is well settled that the Federal Government may not be estopped on the same terms as any other litigant. Heckler v. Community Health Services, 467 U.S. 51, 59 (1984). The Federal Government may be estopped from enforcing the law against a private party if that party proves the traditional elements of estoppel as well as establishes that the Government or its agent acted to deceive or mislead the party. Id. (citing Restatement (Second) of Torts § 894(1) (1979)). I find that there is no probative evidence in the record that Department of Education officials misled the institution and, therefore, estoppel may not be applied in this case.*

Footnote: 4 *4 The decision of the administrative law judge was affirmed as the "final decision of the Department" by the Secretary on July 23, 1993.*

Footnote: 5 *5 This is particularly true in instances where institutions offer programs and courses similar to those offered by Catherine College. It does not defy logic or commonsense to conclude that courses in principles of accounting, DBase, desktop publishing, or sales and*

marketing may require students to undertake some degree of preparation outside of classroom instruction regardless of whether the course is offered by a clock hour or credit hour institution.

Footnote: 6 *6 In this regard, the institution submitted several affidavits attesting to the fact that the institution's assignment of credit hours for outside classroom preparation was consistent with commonly accepted academic standards in the postsecondary education community.*

Footnote: 7 *7 SFAP argues that the fact that Catherine College left blank columns in spaces where the state application requested the institution to indicate the number "preparation hours" required by the school's programs demonstrates that the institution's programs did not require preparation outside of classroom instruction. I do not agree. The school indicates that it left those columns blank because as a clock hour institution it could not use preparation hours as part of its measurement of course length. In addition, the application does not provide a column under the credit hour conversion section for an institution to indicate the number of hours of outside preparation required by the program after conversion. Consequently, the fact that the application contains no listing of hours of outside preparation does not, itself, persuade me that the institution did not require outside preparation. To the contrary, the application clearly indicates, by providing a simple calculation formula, that even if preparation hours were listed by a clock hour institution, those hours could not be used to calculate the total number of clock hours for a given program. The formula specifically excludes preparation hours from the clock hour calculation.*