In the Matter of

LeMoyne-Owen College, Docket No. 94-171-SA
Memphis, TN, Student Financial Assistance Proceeding

Respondent.

Appearances: William A. Blakey, Esq., Washington, D.C., for LeMoyne-Owen College.

Stephen M. Kraut, Esq., Office of the General Counsel, Washington, D.C., for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Frank K. Krueger, Jr., Administrative Judge.

DECISION

INTRODUCTION

The Respondent, LeMoyne-Owen College, is an institution of higher education, licensed by the State of Tennessee, and accredited by the Southern Association of Colleges and Schools. Respondent's campus is located at 807 Walker Avenue, Memphis, Tennessee. Respondent participates in a number of Federal student assistance programs, including the Pell Grant Program, the Stafford Loan Program, and the Supplemental Educational Opportunity Grant Program (SEOG).

In 1993, the Office of the Inspector General (IG), U.S. Department of Education (ED), conducted an audit of the Respondent's administration under the student assistance programs, and found that the Respondent, from January 1, 1992, to July 1, 1993, operated a baccalaureate teacher education program at two sites in Mississippi -- Tunica and Greenville -- which were not authorized by the State of Mississippi. The Office of Student Financial Assistance Programs (SFAP) issued a Final Audit Determination dated August 22, 1994, which upheld the IG finding. The liability of the Respondent for expenditures made to students at these Mississippi sites under the Federal student assistance programs during this period is the primary issue dealt with in this decision.

An ancillary issue involves an additional IG finding that the Respondent is liable to repay the Federal assistance it awarded to students who were not making satisfactory academic progress. In its brief, Respondent confesses full liability on this issue. However, in order to

ensure a final resolution, specific findings are made on this issue.See footnote 1 *1*

The Respondent appealed the Final Audit Determination on October 12, 1994. On November 30, 1994, the Respondent filed its brief, along with supporting exhibits (labeled ED-1 through ED-9); on December 19, 1994, SFAP submitted its brief, along with supporting exhibits (labeled A through H). Respondent admits that its Mississippi program was initiated without proper approval from the State, but argues that its liability for granting unauthorized student financial assistance is limited by several factors. Respondent argues that the State granted it approval on July 1, 1993, retroactive to July 30, 1992, the date when its application was received by the State. Respondent also argues, somewhat vaguely, that its Mississippi program was not exactly a degree-granting program, and, hence, suggests that it was not covered by the regulations requiring prior state approval. Finally, Respondent argues that it is not liable for the period of January 1, 1992, to June 30, 1992, because the IG audit only covered the period of July 1, 1992, to June 30, 1993. Respondent admits liability for the period of July 1, 1992, to July 30, 1992, since this period was covered by the audit, but was before the date of the supposed retroactive approval, July 30, 1992.

For the reasons provided below, the Respondent's arguments are rejected, and the Final Audit Determination is affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Additional Locations.

As noted above, in January, 1992, the Respondent initiated a program at locations in addition to its campus in Memphis, Tennessee, designed to lead to a Bachelor of Science Degree in Educational Studies. This program was initiated subsequent to the ED approval in 1984 for Respondent's participation in the student assistance programs. Although the Mississippi program began in January, 1992, Respondent did not receive authorization from the State of Mississippi to offer this program until July 1, 1993, when it received provisional approval from the Mississippi Commission on College Accreditation. Thus, during this period, Respondent disbursed Federal student financial assistance at its Mississippi locations in violation of 34 C.F.R. § 600.32(1992).

Under 34 C.F.R. § 600.2, an eligible location is defined as one which includes an

institution of higher education as defined in 34 C.F.R. § 600.4. Section 600.4(a)(2) defines an institution of higher education as a public or private non-profit school which is "legally authorized to provide an educational program beyond secondary education in the State in which it is located." The term "legally authorized" is defined to mean "the legal status granted to an institution through charter, license, or other written document issued by the appropriate agency or official in the State in which the institution is physically located." 34 C.F.R. § 600.2. Under 34 C.F.R. § 600.32(b), if an institution of higher education, such as the Respondent, adds a location subsequent to designation by ED as an eligible institution, in order for the additional location to qualify to enroll students receiving Federal aid under the Higher Education Act, that location must satisfy the requirements of Section 600.4; *i.e.,* it must be authorized by the state in which it is located.

In order to be legally qualified to offer its baccalaureate program in Mississippi, the Respondent must be authorized, or "accredited," either provisionally or fully, by the Mississippi Commission on College Accreditation. Miss. Code Ann., title 37, § 37-101-241. *See also* Article I of the Authority and Standards of the Mississippi Commission on College Accreditation, Exhibit E-8, p. 1.See footnote 2 *2* Since Respondent had not complied with this requirement, SFAP is correct in its determination that students enrolled in the Mississippi program were not eligible for Federal loans and grants.

Respondent argues that state approval for its Mississippi program was granted retroactively to July 30, 1992. Respondent appears to rely on Exhibit D, a letter dated September 9, 1994, from the Chair of the Mississippi Commission on College Accreditation to the President of LeMoyne-Owen College, which states as follows:

> On July 30, 1992, the Commission received LeMoyne-Owen's application for accreditation. A preliminary staff review of the application at the time determined it to be properly prepared for submission for approval consideration. However, the Commission did not act on the application until its annual meeting which was held on May 4, 1993. Because of this time differential and the fact
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> that the application was basically in order, the Commission did not discourage LeMoyne-Owen's academic operations in Mississippi for the interim period beginning July 30, 1992, and ending July 1, 1993, at which time provisional accreditation was granted.

This letter on its face is clearly not retroactive approval. Stating that the Respondent's application was "properly prepared . . . for approval consideration," and that the Commission did not "discourage" Respondent's academic operation in Mississippi, is a far cry from approval.See footnote 3 *3*

Respondent also appears to argue that its Mississippi program was not exactly a degree-granting program, but one in which course work would be completed at the Memphis campus, and that the Mississippi sites were never considered as "branch campuses." However, the Respondent submits no evidence to support its argument. What evidence exists in the record on this point suggests that requirements were imposed subsequent to the initiation of the program as an afterthought to create a justification for not complying with the regulations. The IG found that, beginning in the fall of 1993, students at the Mississippi locations were required to take one course at the Memphis campus, and that, beginning in the spring of 1994, students were required to take all of their courses at the Memphis campus. The IG also found that the Mississippi students did not learn about the requirement that they take all of their courses in Memphis until they registered for classes in January, 1994. This resulted in a 150 mile commute for those students. The IG reviewed the original application submitted to the Mississippi Commission on Accreditation, and found no indication that there was any plan to require students in Mississippi to take courses at the Memphis campus. Thus, the undersigned finds that the Respondent failed to meet its burden of proof in this area. *See* 34 C.F.R. § 668.116(d). Whether they are called "campuses" or locations, the evidence clearly supports the conclusion made by the IG that the Respondent attempted to provide a higher education program at a site other than that approved by ED for enrollment of students receiving Federal student aid.

Finally, Respondent contends that it is not liable for the period of January 1, 1992, to July 1, 1992, since the period technically covered by the IG audit was July 1, 1992, through June 30, 1993. However, in doing the audit for this period, the IG discovered that Respondent had been operating the unauthorized program since January 1, 1992. In addition, Respondent implicitly admits that it operated the unauthorized program since January 1, 1992, to July 30, 1992, the date to which it allegedly received retroactive approval. Thus, the undersigned finds Respondents's argument somewhat sophomoric, and is rejected.

According to SFAP, for the period of July 1, 1992, through June 30, 1993, students attending the unauthorized program in Mississippi received at least $112,275 in Pell Grants. While asserting that it is not liable to repay these disbursements, the Respondent makes no effort

to challenge the calculations in the Final Audit Determination. The interest paid by ED on the unauthorized Stafford Loans, as estimated by SFAP for this period, was $25,248.See footnote 4 *4* Once again, these figures are not challenged by the Respondent.

For the period January 1, 1992, through June 30, 1992, students attending the Respondent's Mississippi program received $59,300 in Pell Grants and $81,704 in Stafford Loans. This finding is based on an Independent Audit Report by Banks, Finley, White & Co., Certified Public Accountants, Memphis, Tennessee, dated October 12, 1994, and introduced into the record by Respondent as Exhibit A. Respondent's counsel appears to misread the report. On page 1 of its brief, the following is stated:

> The College disbursed $24,850.00 in student financial aid between January 1, 1992 and July 30, 1992 (see Exhibit A) to fifty-three (53) students. . . . [Reference to Exhibit A in original.]

This statement is incorrect. What the report shows is that, for the period between July 1, 1992, and July 30, 1992, the Respondent disbursed $24,850 in student financial aid to 6 students; and, for the period between January 1, 1992, and June 30, 1992, Respondent disbursed $141,004.55 in student aid to 53 students ($59,300 in Pell Grants, and $81,704.55 in Stafford Loans).

There are two computer printouts which are part of this report. The first concerns students in Respondent's Mississippi program for the period January 1, 1992, through June 30, 1992, and indicates the total amount of Pell Grants and Stafford Loans disbursed to these students to be $141,004.55. The second computer printout concerns students enrolled in the Mississippi program for the period July 1, 1992, through July 31, 1992, and indicates that the amount of Pell Grants and Stafford Loans disbursed to these students to be $24,850. Counsel seems to have confused the two lists.See footnote 5 *5*

B. Satisfactory Academic Progress.

The IG audit revealed that there were eight students attending LeMoyne-Owen College who were not making satisfactory academic progress, yet received Pell Grants, SEOGs, and Stafford Loans. There was a total of $7,068 disbursed to these students --$2,400 in Pell Grants; $1,750 in SEOGs; and $2,400 in Stafford Loans, plus $476 in interest on the Stafford Loans. Since these students were not making satisfactory academic progress, these disbursements were made in

violation of 34 C.F.R. Subpart D. As indicated in the introduction to this decision, the Respondent admits full liability in this area.

The record is not clear on whether any of the students identified as not making satisfactory academic progress were enrolled at the Mississippi locations. If so, then the amount of liability assessed for this violation should be reduced by any liability assessed covering these same students for the failure of the Respondent to comply with 34 C.F.R. § 600.32.

ORDER

ORDERED, that the Respondent repay to the U.S. Department of Education the following:

Pell Grants

$112,275 -- Unauthorized grants at Mississippi locations for July 1, 1992, through June 30, 1993.
59,300 -- Unauthorized grants at Mississippi locations for January 1, 1992, through June 30, 1992.
2,400 -- Grants to students not making satisfactory academic progress.
$173,975 -- Total Pell Grant liability.

Stafford Loan Interest

Respondent must pay to the Department the total interest paid by the Department on the unauthorized loans disbursed by the Respondent under the Stafford Loan Program. That amount is $25,248 for the period of July 1, 1992, through June 30, 1993. The Respondent must calculate, in a manner consistent with the practice of the SFAP, the remaining interest owed the Department for the period January 1, 1992, through June 30, 1992. In addition, Respondent

owes the Department $476 in interest payments for students not making satisfactory academic progress.

SEOG

$1,750 -- Grants improperly awarded to students not making satisfactory academic progress.

FURTHER ORDERED, that the Respondent buy back from the lenders the unauthorized Stafford Loans disbursed by the Respondent, January 1, 1992, through June 30, 1993. The amount of this liability will depend on the unpaid balances on those loans.

Issued: May 18, 1995 _____
Washington, D.C. Frank K. Krueger, Jr., Administrative Judge

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 There were two other issues raised by the Final Audit Determination which are not dealt with in this decision. One involved the failure of the Respondent to notify ED of the initiation of its program in Mississippi. Because of an apparent inconsistency between ED's instructions to participating institutions and the implementing regulations, this issue was dropped by SFAP in its brief. The other issue involved an IG finding that the Respondent failed to follow its established admissions policy by admitting some students without documentation of high school diplomas and ACT scores. Since the Final Audit Determination simply required the Respondent to attempt to secure the proper documentation and report back to SFAP, it is not dealt with in this appeal.*

Footnote: 2 *2 As noted in SFAP's brief (footnote 6, p. 10), the language used by Mississippi may be confusing. Under the Higher Education Act, an eligible location must be authorized by the state in which it is located, and the institution must be accredited by a nationally recognized accrediting agency. See 20 U.S.C. §§ 1201(a)(1) and (a)(5), and 34 C.F.R. §§ 600.4(a)(3) and (a)(5)(I). In this case, the authorizing agency for Mississippi is the Mississippi Commission on College Accreditation. The Commission is not, notwithstanding its name, a nationally recognized accrediting agency. The nationally recognized accrediting agency which has accredited the Respondent is the Southern Association of Colleges and Schools. In fact, the Mississippi Commission on College Accreditation requires that all institutions of higher education seeking authority to operate in Mississippi receive accreditation from the Southern Association of Colleges and Schools. Exhibit ED-8, p. 2.*

Footnote: 3 *3 Also, as suggested by SFAP in its brief (footnote 11, p. 17), Respondent's application did not appear in order, as it was missing the required Certificate from the Mississippi Secretary of State, and documentation regarding two other requirements.*

Footnote: 4 *4 The figure given by the Audit Resolution Letter is $25,724. According to the SFAP brief, this amount included $476 paid out in interest for students found not to be making satisfactory progress. Thus, the proper estimated interest is $25,724 - $476 = $25,248.*

Although the Final Audit Determination sought reimbursement for special allowances paid by

ED on the Stafford Loans, in its brief SFAP states that ED paid no special allowances on the Stafford Loans in question.

Footnote: 5 *5 Since this report was not submitted to ED before the date that Respondent was required to file its request for review, there may be a question whether the report was timely. See 34 C.F.R. § 668.116(e)(1)(ii). In addition, there may be a question of whether the report is admissible, even if timely, since it deals with matters relating to a period of time other than the period technically covered by the audit review. See 34 C.F.R. § 668.116(f). However, the report was not objected to by SFAP, and is clearly probative and relevant under 34 C.F.R. § 668.116(f).*

As indicated above, the IG audit, although technically covering the period July 1, 1992, to June 30, 1993, clearly found that the Respondent began its Mississippi program in January, 1992. The Respondent has never questioned this conclusion. Thus, consistent with the responsibility of the hearing official to provide a fair hearing to all parties, the report was admitted into evidence. See In Re Baytown Technical School, Inc., Docket No. 91-40-SP, (Decision of Secretary, April 12, 1994).