

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

In the Matter of **Docket No. 94-172-SA**

CHICAGO STATE UNIVERSITY, Student Financial Assistance Proceeding
ACN: 05-30007

Appearances: David B. Rigney, Esq., Lankenau, Kovner & Kurtz, Attorneys At Law, New York, New York, for Chicago State University.

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 Richard I. Slippen

DECISION

On August 12, 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 Chicago State University (CSU) violated several regulations promulgated pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* CSU is a public institution offering both undergraduate and graduate programs.

From July 1, 1991, to June 30, 1992, auditors from the Department's Regional Inspector General, Region V, conducted an audit for the period of July 1, 1991, through June 30, 1992. An audit report was sent to CSU on April 6, 1994. Based on its review, SFAP issued a FAD containing findings that CSU did not comply with the satisfactory academic progress requirements (Finding # 1) and that CSU's file maintenance was inadequate (Finding # 2). [See footnote 1 /](#) In addition to the monetary liability assessed for Finding # 1, SFAP required that CSU conduct a full file review of

for all Title IV aid recipients for the audit period in order to determine if any other recipients

failed to maintain satisfactory academic progress and, if so, the amount of the improperly received funds.

Under 34 C.F.R. § 668.116, oral argument may be heard if the hearing official determines that an oral argument is necessary to clarify the issues and positions of the parties as presented in their written submissions. On April 21, 1995, CSU requested that oral argument be heard on this matter. I hereby deny CSU's request for oral argument. I find that oral argument is unnecessary to further illuminate the issues in this appeal.

I.

To be eligible to receive Title IV aid, a student must maintain satisfactory academic progress in his or her course of study. 20 U.S.C. § 1091(a)(2) and 34 C.F.R. § 668.7(a)(5) and (c) (1991). An institution must establish, publish, and apply reasonable standards for measuring satisfactory academic progress. 34 C.F.R. § 668.14(e) (1991). In order to be reasonable, an institution's standards must be consistently applied to all students within categories of students. 34 C.F.R. § 668.14(e) (1991).

SFAP asserts that CSU has two policies in effect: a less stringent policy contained in the Financial Information section of CSU's Undergraduate Catalogue and a stricter policy found in the section of the catalogue on Academic Regulations. SFAP argues that CSU applied the more lenient satisfactory academic progress policy to students who received Title IV assistance. Further, SFAP argues that when the stricter policy is applied to the 26 students used in the audit's sample, none would have been considered to be making satisfactory academic progress and, therefore, all would have been ineligible to receive Title IV aid for the period in question. SFAP also argues that CSU's admitted additional use of unpublished practices or rules to measure satisfactory academic progress violates 34 C.F.R. § 668.14(e) (1991).

CSU argues that FAD Finding # 1 is invalid because the audit covered the 1991-1992 academic year and the FAD cites the institution's Undergraduate Catalogue for the 1992-1993 academic year as the source of the two policies. [See footnote 2 2](#) CSU further argues that the FAD does not specify or explain the differences between the two policies or how SFAP determined that one policy was more stringent than the other. CSU also argues that the satisfactory academic progress policies were subject to particularized judgments in individual cases for both Title IV recipients and non-recipients, and that the institution's policies served merely as a flexible guide for determining whether students were maintaining satisfactory academic progress. CSU adds that once individualized judgments are made, without regard to students' Title IV status, and in

accordance with the institution's standards and practices, at least 17 of the 26 students identified by SFAP were maintaining satisfactory academic progress. CSU asserts that the reduction in the number of students who did not maintain satisfactory academic progress merits the denial of a full file review since only 9 out of the 200 student files reviewed during the audit indicated that the students were not maintaining satisfactory academic progress. Thus, according to CSU, the institution's error rate would be well below the 10 percent used as a standard trigger for requesting full file reviews and should as well merit a corresponding reduction in the assessed liability.

This tribunal previously has held that the regulation's use of the word "publish" requires that the institution make known to the public all of the required elements of its satisfactory academic progress policy. *In Re Santa Clara Beauty College*, U.S. Dept of Educ., Docket No. 94-24-SP, (November 14, 1994). CSU freely admits that it used the institution's satisfactory academic progress policies only as a guide or "framework rather than as a final determinant" and heavily relied on "judgments of individualized circumstances" and "practices or standards" not included in the policies identified in Respondent's Exhibit 5 to determine if a student was maintaining satisfactory academic progress. [See footnote 3 3](#) (Respondent's Brief at 9 - 10). CSU's admission

that many of its practices were not published in its satisfactory academic progress policies violates the requirement of 34 C.F.R. § 668.14(e) that an institution publish its policy. [See footnote 4 4](#)

An institution must apply its satisfactory academic progress policy under 34 C.F.R. § 668.14(e). Additionally, in order for an institution's satisfactory academic progress policy to be valid, its standards must be reasonable. 34 C.F.R. § 668.14(e) (1991). A determination of reasonableness includes the consistent application of the satisfactory academic progress standards to all students within categories of students and programs established by the institution. 34 C.F.R. § 668.14(e)(3)(v) (1991). As demonstrated by CSU's admission, its satisfactory academic progress policies were not applied due to CSU's approach of using these policies as a mere framework for its determinations. Moreover, CSU's tailoring of its policies according to individual judgments and/or unpublished standards and practices violates the requirement that CSU consistently apply its satisfactory academic policies.

CSU offers a lengthy explanation of how individualized judgments and practices not made known to the public demonstrate that 11 of the 26 students were maintaining satisfactory academic progress as written. CSU also concedes that a "literal" reading or "rigid" application of the institution's policies would indicate that even some of these 11 students were not maintaining satisfactory academic progress. As discussed above, CSU's satisfactory academic progress policies violate the requirement that the institution establish, publish, and apply reasonable standards for measuring whether a student is maintaining satisfactory academic progress. 34 C.F.R. § 668.14(e) (1991). Therefore, CSU's explanation of these 11 students as well as the remaining students who CSU argues were maintaining satisfactory academic progress as the result of individualized judgments and/or unwritten standards, is not probative evidence that the institution has complied with the requirements of the regulation. [See footnote 5 5](#)

II.

An institution is required to determine if a student previously attended another institution in order for the student to receive Title IV funds. 34 C.F.R. § 668.19(a)(1). If there was prior attendance, the current institution or the student shall request a financial aid transcript. 34 C.F.R. § 668.19(a)(2)(1991). An institution cannot disburse FFEL proceeds until a financial aid transcript is received. 34 C.F.R. § 668.19(a)(3)(iv) (1991). An institution may disburse the first payment of a student's Pell Grant, but the institution remains liable for the Title IV funds if it later fails to obtain a financial aid transcript. 34 C.F.R. § 668.19(a)(3)(i) (1991). Also, to be eligible to receive Title IV funds, a student must have a high school diploma or its equivalent, and a student who has previously defaulted on a student loan must have made satisfactory arrangements to repay the defaulted loan. 34 C.F.R. § 668.7(a)(3)(i) and (e) (1991).

SFAP argues that CSU failed to maintain documentation such as financial aid transcripts or copies of high school diplomas for 10 students and that a financial aid folder was missing for one student. Although CSU produced the missing documentation for 10 of these 11 students, SFAP asserts that there is no evidence that CSU reviewed this documentation before disbursing Title IV funds to these students. CSU argues that it has now provided financial aid transcripts for

seven students, documentation of high school graduation and/or completion for two students, and an acknowledgment that one student was not in default on a Title IV loan.

Subpart H proceedings govern appeal procedures in cases which arise from audit or program review determinations. Subpart H regulations were intended to assess liability when an

institution misused funds. *In Re Macomb Community College*, U.S. Dep't of Educ., 91-80-SP, (May 5, 1993). There must be some harm to SFAP in order to assess liability. *Id.* At 7. In *In Re Macomb Community College*, this tribunal held that SFAP could assess liability due to the institution's failure to maintain records substantiating the expenditure of Title IV funds when that failure resulted in the institution receiving a larger share of Title IV funds than it was entitled. *Id.* at 8. In the instant case, CSU was able to produce documentation demonstrating that 10 of the eleven students were eligible to receive Title IV funds. Therefore, I find that CSU has met its burden of proof under 34 C.F.R. § 668.116(d) that Title IV funds were lawfully disbursed to ten of the eleven students at issue. However, CSU remains liable for all Title IV funds disbursed to the one student whose financial aid folder was missing.

FINDINGS

1. CSU's satisfactory academic progress policies violate 34 C.F.R. § 668.14 (1991).
2. CSU met its burden of proof in demonstrating that Title IV funds were lawfully disbursed to the 10 of the 11 students identified in FAD Finding # 2. CSU remains liable for the Title IV funds disbursed to the one student whose financial aid folder was missing.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Chicago State University reimburse the United States Department of Education for improperly awarded grants and loans issued by CSU under the Title IV programs, and refund to the appropriate holders of FFEL Program loans improperly awarded loans, in the dollar amounts and under the conditions specified in SFAP's Final Audit Determination of August 12, 1994.

Judge Richard I. Slippen

Dated: April 26, 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 FAD Finding # 3 had no liability attached and, therefore, will not be reviewed in this decision.

Footnote: 2 2 Although the FAD cites the satisfactory academic progress policies in the institution's catalogue for the 1992-1993 academic year, it is apparent from its submissions that CSU understands what institutional policies the FAD discusses and that the policies discussed in FAD Finding # 1 are set forth in CSU's 1991-1992 catalogue. See Respondent's Exhibit 5.

Footnote: 3 3 CSU's standards included 1) applying the institution's policy of dismissing a student for consecutive terms grade point averages (GPA) below 1.5 only when the student attempted more than 11 credit hours in each term and the student's cumulative GPA at the end of the second consecutive term was 2.00, 2) not applying the institution's policy of dismissing a student who received an failing grade or incomplete three times in a developmental course to a student who had a cumulative GPA of 2.00 at the end of the term in which the third failing grade or incomplete was received, 3) not applying the institution's policy of dismissing a student who failed to maintain or achieve the cumulative GPA listed for the number of credits earned by the student until the student was on probation for at least 12 additional hours of attempted credit.

Footnote: 4 4 CSU refers to an internally used Probationary/Drop Report Users Manual (Respondent's Exhibit 6) as documenting some or all of its practices. CSU, however, offers no proof that this manual was made available to the public.

Footnote: 5 5 This tribunal notes that CSU's satisfactory academic progress policies seem to be so contradictory and confused as to make many of these explanations deficient in ways not even addressed by CSU in its brief.