
In the Matter of

**Colorado School of Travel, Docket No. 94-174-SP
Lakewood, Colorado, Student Financial Assistance Proceeding**

Respondent.

Appearances: Jeff C. Heller, Director of Education, Colorado School of Travel,
Lakewood, Colorado, for Respondent.

Howard D. Sorensen, Esq., Office of the General Counsel, U.S. Department
of Education, Washington, D.C., for the Student Financial Assistance Programs.

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

DECISION

ISSUE

Whether Respondent violated the regulations implementing the Federal student aid program by making second grant and loan disbursements to participating students prior to their completion of the midpoint of the academic period for which the aid was awarded.

INTRODUCTION

Respondent, which provides training in all aspects of the travel industry, currently enrolls twenty-five students, most of whom receive assistance under the Pell Grant Program and the Federal Family Education Loan (FFEL) Program. Respondent disputes an assessment by the Student Financial Assistance Programs (SFAP), U. S. Department of Education (ED), as part of a Final Audit Determination issued on September 1, 1994. The period covered by the review was award years 1992-93 and 1993-94. For those years, SFAP assessed Respondent \$4,700 for improper Pell Grant disbursements and \$1,736 for improper FFEL disbursements.

The Respondent's academic program consisted of thirty weeks, for a total of thirty-six credit hours. The Respondent's program is not divided into academic terms, such as quarters or semesters. Under such programs, authorized Pell Grant and FFEL payments are made in two

installments -- the first at the beginning of the academic program, and the second at the midpoint of the program. The Respondent made second payments to five students by measuring the midpoint in terms of the calendar time, and not in terms of credit hours. It appears that the payments were made when the students completed fifteen weeks of the thirty-week program, and

not upon completion of eighteen credit hours of the thirty-six credit hour program. [See footnote 1](#) The students then dropped out of the program before completion of the eighteen credit hours. As a result, SFAP assessed liability to the Respondent for the amount of the second disbursements.

It is SFAP's contention that the midpoint must be measured in terms of credit hours; Respondent contends that the midpoint can be measured in terms of calendar time. For the reasons provided below, the hearing official finds for SFAP with respect to the Pell Grant Program, and for the Respondent with respect to the FFEL Program.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pell Grants

Under the regulations implementing the Pell Grant Program, a participating student may not receive a grant in one payment. Under 34 C.F.R. § 690.3(b), for the institution that does not have academic terms, there are two payment periods -- the first is the period in which the student completes the first half of an academic year, as measured in credit or clock hours; the second is

the period in which the student completes the second half of an academic year. [See footnote 2](#) Under 34 C.F.R. § 690.63(c), a disbursement for each of these periods cannot exceed a certain amount of the total grant, which, in the case of the Respondent, comes out to one-half of the total grant. [See footnote 3](#) Under 34 C.F.R. § 690.75(a)(3)(ii), for each payment period, a student may not receive a disbursement until the student completes the required credit hours covered by the payment period for which the student already received a disbursement.

In the case of a school such as Respondent, which does not measure its program in academic terms, the first disbursement is made at the beginning of the academic program, with the second disbursement made only after the student has completed one-half of his or her credit hours. Thus, a student participating in Respondent's thirty-week program could not receive the second payment until after the student completed eighteen credit hours. By issuing students the second disbursement of their Pell Grants after the completion of fifteen weeks of the program, but before the completion of eighteen credit hours, Respondent was in violation of the regulatory requirement outlined above. Thus, SFAP was correct in its assessment of liability of Respondent to reimburse ED for the second disbursements issued prior to completion of eighteen credit hours. SFAP determined this amount to be \$4,700. This calculation was not challenged by Respondent.

Thus, Respondent is liable to repay \$4,700 to ED.

Respondent argues that 34 C.F.R. § 668.22 supports its position that the midpoint of an academic program can be determined on a calendar basis, rather than a credit hour basis. However, as SFAP points out in its brief, this section is inapposite, in that it deals with the distribution of refunds among the various aid sources after a student withdraws from an academic program.

S E R V I C E

Copies of the attached initial decision have been sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED**, to the following:

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Footnote: 1 1 It is not precisely clear how Respondent calculated the midpoint. The Final Program Review Determination states as follows:

The [Respondent's] financial aid director revealed it was standard procedure to include, in the mid-point credit hour determination, estimated credit hours based upon elapsed calendar time and not on 18 actual credit hours completed.

This cryptic characterization of Respondent's action is made in a number of other documents shared between SFAP and the Respondent, and was never challenged by the Respondent. Since this was never represented as a direct quotation, and since it is a statement made by SFAP, the hearing official construed it in a light most favorable to the Respondent as a determination of the midpoint as the middle of the program in terms of calendar time. If the determination was at a point in time before the calendar midpoint and before the completion of eighteen credit hours, the determination would have clearly been a violation of the regulations. It is clear, however, that Respondent's legal argument is that the midpoint can be determined at the calendar midpoint of the program. See Respondent's Exhibits 2 and 3. Thus, the undersigned has construed the above-quoted factual allegation by SFAP in a manner consistent with Respondent's legal argument.

Footnote: 2 2 It is not clear whether 34 C.F.R. § 690.3(b)(1) applies, or whether 34 C.F.R. § 690.3(b)(3) applies. However, the outcome is the same under either section, so it does not matter which section applies.

Both sections apply to programs without academic terms, but section (b)(1) applies to a program which is one "academic year," while section (b)(3) applies to a program less than an "academic year." The confusion arises over the meaning of "academic year," which is defined, at 34 C.F.R. § 668.2 as follows:

Academic year: . . . is a minimum of 30 weeks . . of instructional time during which . . . a full time student is expected to complete at least --

(I) Twenty-four semester or trimester hours or 36 quarter hours in an educational program whose length is measured in credit hours; . . .

Although Respondent's program is thirty weeks in length, the term "quarter hour" is not defined, so one cannot tell whether Respondent's program is more or less than an academic year. But, under both sections of the regulations, it is clear that the second disbursement should not have been made until students completed eighteen credit hours.

[Footnote: 3](#) 3 SFAP, in its brief, incorrectly applied 34 C.F.R. § 690.63(b), rather than 34 C.F.R. § 690.63(c). However, the effect on Respondent of the two sections is the same. Section 690.63(b) applies to programs using academic terms, while section 690.63(c) applies to programs which do not use academic terms.

[Footnote: 4](#) 4 Although SFAP contends that the regulations implementing the FFEL Program require that a second disbursement be made only after a student has completed one-half of the credit hours required for the loan period, it cites no authority to support its position. In its brief, SFAP links both programs together, but cites only the Pell Grant regulations as an example. Consequently, the brief was not helpful with respect to the FFEL Program.

[Footnote: 5](#) 5 It makes little sense that the "midpoint" determination in the Pell Grant Program and the FFEL Program should be different, but, under the regulations at issue, as noted above, different interpretations are possible. It seems obvious that SFAP should review proposed regulations before they are issued in final to ensure consistency among the various student aid programs. That, apparently, was not done with respect to the regulations at issue in this case.