UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Amherst Career Center,
Greenwood, Mississippi

Respondent.

Docket No. 94-194-SP
Student Financial Assistance Program

Appearances:

Peter S. Leyton, Esq., Ritzert & Leyton, P.C., Fairfax, Virginia, for Respondent.

Renee Brooker, 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

INTRODUCTION

The Respondent offers training programs in credit management, for becoming an executive secretary, and for becoming a medical/management assistant. The Respondent is accredited by the Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

On September 16, 1994, the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), issued a final program review determination concerning Respondent's participation in the Federal student aid program. In the final program review determination, SFAP alleged violations of the standards governing the student aid program in the following areas: that thirty students were enrolled in an ineligible program of study; that Respondent did not complete required verification of information submitted by six students on their financial aid applications: that Respondent improperly used photocopies of ability-to- benefit tests; and that Respondent misscored some tests. By letter dated November 1, 1994, Respondent appealed the final program review determination. In its brief submitted on May 1, 1995, SFAP dropped its allegations concerning the ability-to-benefit tests.

For the reasons provided below, the undersigned hearing official finds in favor of SFAP on the two remaining issues considered in the final program review determination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Enrollment of Students In Ineligible Program.

SFAP seeks to recover Pell Grants and Federal Family Education Program (FFEP) loans awarded to thirty students it contends were enrolled in ineligible programs, because Respondent permitted the students to complete their programs of study in less calendar time than that approved by the accreditation agency. Respondent contends that, for the entire period in question, it was fully accredited by a nationally-recognized accreditation agency approved by ED, and, consequently, it has no liability.

Between April 14, 1992, and August 5, 1992, Respondent enrolled thirty students in its medical assistance and executive secretary programs. These two programs were approved by the Southern Association of Colleges and Schools as 49.5 and 48 quarter credit hour programs that would normally be completed in thirty-nine weeks.

In August of 1992, Respondent made a decision to close in January 1993. The school then provided the opportunity for students enrolled as of August 15, 1992, to accelerate their programs of study to enable them to graduate in December 1992, before the school closed. 1 Of the thirty students in question, four completed their programs in approximately seventeen weeks; eight in approximately eighteen weeks; six in approximately nineteen weeks; five in approximately twenty-seven weeks; five in approximately twenty-eight weeks; and two in approximately twenty-nine weeks. All of the programs in question would normally have been completed in thirty-nine weeks. The amount of actual classroom instruction tie remained the same.

SFAP claims that by compressing its thirty-nine-week programs into a period of as little as seventeen weeks, the Respondent was operating beyond the scope of its accreditation. Respondent, on the other hand, argues that the statute and regulations require that Respondent's program be accredited, and that, during the time in question and since, it has always been accredited. The letter from the accreditation agency granting accreditation to the programs in question does not specify the number of calendar weeks in which the programs are to take place, but it does specify the total number of clock and quarter hours for each program. Respondent's course catalog in effect at the time it received its accreditation specified that the courses would be over a thirty-nine-week period. Respondent admits that the courses in question would normally be completed in thirty nine weeks. (Respondent's Initial Brief, p. 3.) Respondent argues that it does not matter what normal expectations were, or what was in the course catalog, since it was accredited, thus meeting the requirements of the regulations.

SFAP's position is more persuasive. Under the Policies and Standards of the Commission on Occupational Education Institutions, Southern Association of Colleges and Schools, 1991 Edition, Respondent had a clear obligation to seek approval for its accelerated course schedule before it was implemented. (Exhibit R-3.) Under those policies, Respondent was obligated to seek prior approval of all "substantive changes." A substantive change is defined as follows:

A substantive change is one which significantly alters its objective; scope; program; location; standing with another nationally recognized accrediting agency or state or federal agency; financial stability; ownership; or control. A substantive change may be planned or unplanned.

A candidate or an accredited institution planning a substantive change must inform the Commission as soon as the plans are made, but no later than seven (7) working days prior to the change. The Commission must be notified within five (5) working days after an unplanned substantive change occurs.

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... Failure to notify the Commission may cause loss of... accreditation. Planned substantive changes include but are not limited to the following:

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(g.) Change in length of an education program.

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SFAP contends that the accrediting agency specifically approved the programs at issue for a period of thirty-nine weeks. It cites in support of its contention a letter from the Associate Executive Director of the accrediting agency. The letter notes that although the original letter granting accreditation does not specify the length of the program, the 1992 school catalog shows that it was to run for thirty-nine weeks. (ED Exhibit 3.) Although the letter granting the accreditation does not specify the length of the program in terms of calendar time, the standards of the accrediting agency, quoted above, required that Respondent notify it of a change in the length of an education program no later than seven days prior to the change. Since the Respondent failed to do this, it was in clear violation of the accrediting standards. Given the substantial reduction in the length of its programs, and given the clear requirement that it seek prior approval for any change in the length of its programs, the hearing official concludes, based on the facts of this case, that the Respondent was operating beyond the scope of its accreditation and in violation of 20 U.S.C. § 1088(e).

Respondent contends that the conversion from a thirty-nine-week schedule to one ranging from seventeen weeks to twenty-nine weeks was not a "change in length" of its programs, since the number of actual classroom hours of instruction remained the same. Although the "length of an education program" may be subject to another interpretation, 2 one obvious interpretation is that it means a change in the calendar time it takes to complete a program. This is clearly an important item to be considered by an accrediting agency. In deciding whether to accelerate such a program, an accrediting agency would have to consider the ability of a student to absorb material, normally designed to be learned over a thirty-nine week period, in a period of from seventeen to twenty-nine weeks. Clearly this is the type of change contemplated by the accreditation Policies, even though one could argue that the meaning of "change in length" is subject to several meanings. And the list provided in the Policies of planned "substantive changes" is a list of examples, not an exhaustive list of all possibilities.

Respondent further argues that since it is accredited, even though it has not followed the policies of its accrediting agency and did not seek approval of substantive changes in the length of the calendar schedules for its programs, SFAP has no authority to apply the standards used by the accrediting agency. This argument must be rejected since its adoption would insulate an education program from complying with accreditation standards by simply not seeking approval from the accrediting agency, as Respondent has done in this case. 3 In addition, this initial decision is not based on a conclusion that the accrediting agency would disapprove the changes at issue, but on the conclusion that the changes were "substantive," and, under the Policies of the accrediting agency, the Respondent should have sought approval. Since it did not, given the significant changes it unilaterally made in the length of its programs, the Respondent was operating beyond the scope of the accreditation awarded to these programs, and was, in effect, operating programs different from those approved by the accreditation agency.

SFAP assessed liability in this matter at $75,477 in Pell Grants and $72,931 in FFEP loans. Respondent has not contested this calculation, except to argue, as discussed above, that it h as no liability. Thus, Respondent owes ED $75,477 for unauthorized Pell Grants, and is obligated to purchase the remaining balances on the unauthorized FFEP loans for the thirty students at issue.

II. Information Verification.

SFAP determined that the Respondent failed to obtain necessary documentation to verify information provided by six students on their financial aid applications. Respondent was aware that it failed to verify the information, but argues that its failure should be excused since it has attempted to get the information from these students even though they have graduated. For three of the six, Respondent also argues that it was not responsible for seeking verification since these students were identified for verification by the Respondent's own system, not ED's.

The fact that the Respondent may have made good faith efforts to seek the required information after the students graduated, but is unable to get the information, does not excuse Respondent for its failure to get the information in the first place. Moreover, the fact that three of these students were identified by the Respondent's system, rather than ED's, makes no difference. The fact that they were identified for verification, whether by the Respondent or ED, gave Respondent reason to suspect that the information submitted on the aid applications was questionable, and, under the regulations, gave rise to an obligation by Respondent to verify the information. See 34 C.F.R. § 668.54(a)(3).

SFAP assessed liability in this area at $9,074 in Pell Grants and $9,675 in FFEP loans. Respondent does not contest this calculation. Thus, Respondent owes ED $9,074 for unauthorized Pell Grants, and is obligated to purchase the remaining balances of the unauthorized FFEP loans for these six students.

ORDER

ORDERED, that the Respondent reimburse ED $75,477 in Pell Grants awarded to the thirty students enrolled in its unauthorized accelerated medical assistance and executive secretary

programs during 1992, and buy back from lenders the remaining balances of FFEP loans awarded to those students.

FURTHER ORDERED, that Respondent reimburse ED $9,074 in Pell Grants awarded to the six students identified in SFAP's final audit determination for whom Respondent failed to verify information provided on their student aid applications, and buy back the remaining balances of the FFEP loans awarded to these students.

Issued:
July 3, 1995 Washington, D.C.

Frank K. Drueger, Jr.
Administrative Judge

SERVICE

A copy of the attached initial decision has been sent be **CERTIFIED MAIL, RETURN RECEIPT REQUESTED**, to the following:

Peter S. Leyton, Esq.
Ritzert & Leyton, P.C.
Suite 200
10387 Main Street
Fairfax, Virginia 22030

Renee Brooker, Esq.
Office of the General Counsel
U.S. Department of Education
600 Independence Ave., S.W.
Washington, D.C.

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1 In November 1992, the Respondent rescinded its decision and decided not to close. Students enrolled as of January 1992, went back to the thirty-nine-week programs.

2 The "length of an education program" may mean the length in terms of calendar time, or in terms of credit or clock hours.

3 Under In Re Webster Career College, Inc. Docket No. 91 -39-SP, Decision of the Secretary (July 23, 1993), it is controlling precedent that ED has the authority to apply the standards of an accrediting agency and to, in effect, reverse the decision of the accrediting agency in matters dealing with the quantity of an education program, as opposed to quality. (Webster dealt with the conversion of an education program from clock to semester hours.) If ED can reverse a decision of an accrediting agency in the application of its own substantive standards for determining

accreditation, afortiorari, ED can apply the requirements of an accrediting agency to require approval of significant changes in the length of an education program.