IN THE MATTER OF

Northeast Center for Judaic Studies,
Respondent.

Docket No. 94-55-ST
Student Financial Assistance Proceeding

DECISION

Appearances: Leigh M. Manasevit, Esq., and Kristin E. Hazlitt, Esq., of Brustein & Manasevit, Washington, D.C., for Northeast Center for Judaic Studies.

Russell B. Wolff, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard I. Slippen

BACKGROUND

On February 11, 1994, the United States Department of Education (ED) Office of Student Financial Assistance Programs (SFAP) issued a notice of intent to terminate the eligibility of Northeast Center for Judaic Studies (Northeast) from participation in programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV).See footnote 1 *1* The notice also imposed fines against Northeast totaling $1,255,500.See footnote 2 *2* By letter dated February 23, 1994, Northeast filed a timely appeal of the **Notice of Intent to Terminate and Fine**.

On June 8, 1994, Northeast filed a motion to dismiss the above-captioned proceeding on grounds that dismissal was warranted due to notice deficiencies in SFAP's Notice of Intent to Terminate and Fine. In an Order issued on June 17, 1994, this tribunal denied Northeast's motion and, pursuant to the appeal procedures set forth in 34 C.F.R. Part 668, Subpart G, I established a briefing schedule setting the course for this proceeding.See footnote 3 *3* On June 22, 1994, Northeast filed a petition for review of the tribunal's Order with the Secretary of Education. SFAP opposed the school's petition. Pursuant to 34 C.F.R. 668.98(h), the Secretary took no action on the petition within 15 days of its receipt and, as a consequence, the petition has been deemed denied.

DISCUSSION

This case involves significant allegations of fraudulent conduct on the part of Northeast. Generally, SFAP alleges that the school's fraudulent conduct included the creation and maintenance of numerous falsified and inaccurate student records and the enrollment of numerous purported students in the school's academic programs identified with inaccurate and

falsified signatures, inaccurate dates of high school attendance, inaccurate years of high school attendance, inaccurate places of residency, and inaccurate dates of birth for which the school collected a substantial amount of Federal Title IV program funds.

I

Under 34 C.F.R. § 668.23(f)(2)(i), institutions receiving Title IV funds must establish and maintain records regarding the educational qualifications of each student the school admits regardless of whether the student receives Title IV financial assistance. To satisfy Title IV recordkeeping requirements, an institution's records must be accurate and made available to ED upon request or upon the commencement of a program or audit review process. According to SFAP, Northeast maintained records that contained false or inaccurate information in violation of the school's recordkeeping and fiduciary obligations. The allegedly falsified and inaccurate documents include admission applications, verification worksheets, Student Aid Reports and income confirmation letters. Under this finding, SFAP cites 82 violations for which it seeks a fine of $5,000 for each violation, totaling $410,000.

In rebuttal, Northeast maintains that the evidence SFAP relies upon to show discrepancies in the institution's files includes documents obtained from sources other than the student files of Northeast and, as a consequence, is not probative of whether Northeast's own files are falsified or inaccurate. In addition, Northeast argues that to the extent that its own records contain discrepancies, those discrepancies are the result of falsifications made by the school's students, not the institution. The institution's records, according to Northeast, properly reflect the information given to the school by its students. Northeast also contends that its duty to maintain accurate Title IV records runs only to its obligation to review student files for "discrepant" information that would normally be made available to the institution and, that such information normally would not include copies of records from institutions for which a student may have attended prior to or subsequent to his or her attendance at Northeast. Despite Northeast's arguments to the contrary, I am persuaded that SFAP's evidence sufficiently meets its burden of proof.See footnote 4 *4* Therefore, I uphold SFAP's finding that Northeast maintained records that contained substantial falsifications and inaccuracies in violation of the school's recordkeeping and fiduciary obligations.

As the Secretary held in In the Matter of Romar Beauty Schools, Dkt. No. 90-90-ST, U.S. Dep't of Educ. (September 7, 1994) (Romar), the presence of falsified documents in an institution's student files gives rise to a presumption that the documents were falsified by the institution. The force of the inference is not lost simply because SFAP is unable to produce evidence that an employee of the school or an individual acting on behalf of Northeast falsified the files. Under Romar, to meet its burden, SFAP must present probative corroborating evidence supporting its allegation. This evidence may include evidence of internal inconsistencies in the student files or evidence from otherwise probative sources such as Title IV program fund disbursement reports maintained by SFAP. Affirmative proof of wrongdoing is not essential for SFAP to meet its evidentiary burden of proof. In that regard, the weight of the evidence should support the conclusion that SFAP's view of the facts is *more plausible* (as opposed to being simply just as plausible) than the views offered by the school or arising from commonsense. See,e.g., Romar,

supra, at 9 (upholding the administrative law judge's determination that equivocal evidence is insufficient to sustain a finding of falsification of documents).

In this proceeding, SFAP presents corroborating evidence that its investigators interviewed several purported Northeast students who denied ever having attended the institution, notwithstanding that the school's records indicate that the students attended Northeast for up to six semesters during the 1989-90, 1990-91, and 1991-92 award years. See, e.g., ED Exs. 39, 56. In addition, SFAP presents unrebutted evidence of 73 instances where the school's admission applications did not contain a response to the question requesting the applicant to list the postsecondary institutions previously attended by the applicant. In each of those instances, SFAP's corroborating evidence shows that the students had previously attended a postsecondary institution for which the student received Title IV funds. See, e.g., ED Exs. 9,10,11,20,27,38, and 48.

It is abundantly clear that this is not a case where the evidence could just as plausibly support a finding that *Northeast's* records are accurate and those of another institution are not.See footnote 5 5 Although SFAP cites records from other institutions, SFAP also presents sufficiently probative evidence from Northeast's own files and from SFAP's Title IV program fund disbursement reports, corroborating the evidence gleaned from the records of other schools. In this regard, SFAP presented evidence of inconsistent verification worksheets, income verification letters, and admission applications. See ED Exs. 9,10,28,29, and 69. Consequently, this allegation is overwhelmingly supported by the evidence in the record.

Although SFAP's evidence does not exclude entirely the possibility that Northeast's students falsified some of the documents that SFAP identifies as inaccurate, this tribunal is persuaded that the misrepresentations are, in fact, the result of the conduct of the institution. To begin with, the falsifications were contained within the files of the school. In some instances, the students' names are misspelled on the admission application. In other instances, biographical data is incorrect. Yet, the school invites this tribunal to accept its position that through the presumably negligent efforts of the school, over eighty students, perhaps nearly ten percent of the New York branch of Northeast's student body, were able to enroll in Northeast on the basis of falsified data without any school official or administrative employee recognizing discrepancies in the overwhelming number of inaccurate documents contained in the students' files. As I noted above, this tribunal declines the institution's invitation to adopt this uncompelling conclusion.

II

In addition to the allegations above, SFAP alleges that Northeast's Title IV eligibility designation should be terminated and, the school fined, for failing to comply with applicable Title IV regulations governing the awarding and disbursing of Pell Grants. Specifically, SFAP alleges that Northeast violated Pell Grant program regulations by [1] disbursing Pell Grants to students who were not bona fide regular students studying in a program to prepare them for gainful employment in a recognized occupation; [2] awarding Pell Grants to ineligible students who had earned a bachelor's degree or that degree's equivalent; [3] awarding Pell Grants to students who were simultaneously receiving Pell Grants from other institutions; and [4] failing to obtain financial aid transcripts (FATs) from institutions previously attended by the school's students.

(1)

As a prerequisite to lawful participation in the student financial assistance programs authorized under Title IV, an institution must satisfy either the definition of an "institution of higher education," as set forth at 20 U.S.C. § 1141(a) and 34 C.F.R. § 600.4(a), or the definition of a "postsecondary vocational institution," as set forth at 20 U.S.C. § 1088 and 34 C.F.R. § 600.6. See, e.g., In the Matter of Bnai Arugath Habosem, Dkt. No. 94-73-EA, U.S. Dep't of Educ. (June 16, 1994). To satisfy either of these definitions, an institution must offer an eligible program under the appropriate Title IV requirements.

The parties do not dispute that Northeast is designated as an institution of higher education under 34 C.F.R. § 668.8(c)(3). As such, at least one of Northeast's programs must be consistent with the statutory requirement that the program be at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation. It is well settled that it is not sufficient that gainful employment in a recognized occupation is potentially *derived or incidentally available* at the completion of the school's program; instead, the program must have as its *purpose or aim*, the training of students to obtain employment in a recognized occupation. Students enrolled in programs at institutions of higher education that do not satisfy this requirement are ineligible to receive Title IV funds. See 34 C.F.R. § 668.7(a).

According to SFAP, Northeast disbursed Title IV Pell Grant program funds to students who were not *bona fide* regular students studying for a certificate in a program that prepared students for gainful employment in a recognized occupation.See footnote 6 *6* To support its position, SFAP relies upon academic transcripts and other school records which indicate that some of Northeast's students enrolled in courses that had been successfully completed at other institutions. In addition, SFAP's evidence indicates that some of Northeast's students previously enrolled in several courses at other institutions without ever receiving a certificate or diploma certifying that the student completed one of the school's programs. According to SFAP, this evidence demonstrates that Northeast disbursed Pell Grant program funds to students who were not enrolled in *Northeast* for the purpose of obtaining a degree, certificate, or other recognized credential. SFAP's evidence on this point is entirely unpersuasive. More fundamentally, SFAP does not, because it cannot, cite a relevant Title IV regulation that explicitly prohibits an institution from disbursing Pell Grant program funds to a student engaged in the same or a similar course of study previously attempted at another institution for which the student failed to obtain a degree or certificate.See footnote 7 *7* Indeed, such a basis is not a factor in the determination of student eligibility.See footnote 8 *8*

In its defense, the school persuasively argues that SFAP has not satisfied its burden of proof. SFAP relies almost entirely on evidence from other institutions for which SFAP provides no basis why the records from these other institutions should be considered more reliable than the records of Northeast. More to the point, Northeast correctly asserts that since SFAP's evidence generally shows that students enrolled in courses at other institutions *subsequent* to completing those courses at Northeast, at best, those institutions should be the target of SFAP's allegations, not Northeast.See footnote 9 *9* Accordingly, this tribunal rejects SFAP's allegation that Northeast

impermissibly disbursed Pell Grant program funds to students who were not enrolled in Northeast for the purpose of obtaining a degree, certificate, or other recognized credential.

(2)

The Pell Grant program permits institutions to award grants to help eligible students meet the cost of their postsecondary education. Under the program's regulations, a student is eligible to receive a Pell Grant for the period of time required to complete the recipient's first undergraduate baccalaureate course of study, but students are not entitled to receive Pell Grant funds concurrently from more than one institution or after completing a baccalaureate level course of study. See 34 C.F.R. §§ 690.6 and 690.11.

According to SFAP, Northeast simultaneously awarded Pell Grant program funds to three students who were also recipients of Pell Grant program funds from other institutions. Additionally, SFAP contends that Northeast awarded Pell Grant program funds to 53 students who had previously earned the equivalent of an undergraduate baccalaureate degree from the United Talmudical Academy of Brooklyn (UTA).See footnote 10 *10* SFAP concedes that its evidence is circumstantial, but argues that given the other behavior engaged in by Northeast such as the lack of a motive for the students to lie, the existence of a motive for the school to lie, the fact that this occurred on more than one occasion, and the absence of any affirmative evidence to the contrary, that this tribunal should find that substantial evidence supports the conclusion that Northeast acted knowingly in disbursing Pell Grant program funds to ineligible students. In its defense, Northeast disputes whether UTA graduates obtain the equivalent of a Bachelor's Degree upon completion of that school's program, and challenges the probative value of SFAP's evidence.

Based on the evidence in the record, this tribunal is convinced that at least three of Northeast's students attended more than one institution during the same award year and received Pell Grant program funds from both institutions.See footnote 11 *11* During the 1990-91 award year ED Pell Grant Program Reports show that Northeast disbursed $2,300 in Pell Grant program funds to two students, one of whom also received $2,300 in Pell Grant program funds from United Ger Institutions and the other received the same amount in Pell Grant funds from Jesode Hatorah, both of which are postsecondary educational institutions located in Brooklyn, New York. In addition, during the 1988-89 award year, Northeast disbursed $2,200 in Pell Grant funds to one student who also received $1,095 in Pell Grant funds from Rockland Community College of Suffern, New York.

Although Title IV does not prohibit students from concurrently attending more than one institution, institutions are required to undertake their best efforts to ensure that Pell Grant program funds are not disbursed to students who are recipients of Pell Grant funding from another institution during the same award year. In this regard, the evidence is compelling that Northeast undertook insufficient precautions to ensure that the school did not improperly disburse Pell Grant program funds to its students. However, SFAP's allegation presumes, without any evidentiary showing, that Northeast disbursed Pell Grant program funds with the knowledge that these other institutions also had disbursed Pell Grant funds to Northeast students. Undeniably, in adjudicating issues of fact, this tribunal cannot assume the existence of the very

facts that the party who carries the burden proof has a duty to prove through the submission of reliable and probative evidence. SFAP has not presented evidence showing a sufficient nexus between an obvious improper expenditure of Pell Grant program funds and the institution charged with the impropriety. Based on the record, it is just as conceivable that any of the other institutions disbursed Pell Grant program funds improperly. Recognizing that

the burden of proof in this proceeding remains with SFAP, the tribunal must find this evidentiary failing fatal to its allegation. Accordingly, the tribunal finds SFAP's allegation that *Northeast* simultaneously awarded Pell Grant program funds to three students who were also recipients of Pell Grant program funds from other institutions unsupported by the record.

(3)

As previously noted, SFAP also alleges that Northeast awarded Pell Grant program funds to 52See footnote 12 *12* students who had previously earned the equivalent of an undergraduate baccalaureate degree from UTA. UTA is an institution of higher education that awards First Rabbinic degrees. According to SFAP, the First Rabbinic degree awarded by UTA is the equivalent of a baccalaureate degree. To support its position, SFAP relies on two letters addressed to ED staff from the executive director, Dr. Bernard Fryshman, of UTA's accrediting association, the Association of Advanced Rabbinical and Talmudic Schools (AARTS). These letters state that although AARTS accredited schools in New York State which are not authorized by the State to offer baccalaureate degrees, the First Rabbinic degree is considered by AARTS to be equivalent in duration, intensity, depth of knowledge, and quality of scholarship to baccalaureate programs approved by the State.See footnote 13 *13* In a letter dated July 13, 1994, Dr. Fryshman stated that although New York has not authorized AARTS to award baccalaureate degrees, the States of Maryland, New Jersey, Michigan, Florida, and California have authorized AARTS accredited institutions to award baccalaureate degrees. In addition, Dr. Fryshman noted that students awarded the First Rabbinic degree by ARRTS accredited New York institutions have been admitted into graduate programs and professional schools that generally require a baccalaureate degree for admission.

In opposition to SFAP's position that Northeast disbursed Pell Grant program funds to students who had previously earned the equivalent of an undergraduate baccalaureate degree from UTA, Northeast contends that although the First Rabbinic degree awarded by UTA is a postsecondary degree, First Rabbinic degrees are not baccalaureate degrees or their equivalent under New York State law. In response, SFAP argues that a state's determination whether a program offered by an institution contains the academic or vocational education content for the awarding of a baccalaureate degree or its equivalent to students who successfully complete the program is not dispositive of whether an institution's graduates actually earned an undergraduate baccalaureate degree or its equivalent.See footnote 14 *14* SFAP contends that factors such as whether other states authorized similar programs as baccalaureate degree programs are as relevant in the agency's determination under 34 C.F.R. § 690.6 as the appropriate state's authorization.

SFAP proposes to fine Northeast $10,000 per student for the institution's violation of Section 690.6 because the institution's conduct "shows a disdain for its fiduciary duty that cannot be countenanced."See footnote 15 *15* This tribunal does not agree. SFAP does not dispute

Northeast's assertion that UTA is not authorized by the State of New York to confer baccalaureate degrees or their equivalent upon graduates of its programs. Instead, SFAP argues that the fact that UTA is not authorized by the state in which it is located to confer baccalaureate degrees should not preclude Northeast from treating UTA's graduates as if UTA had conferred baccalaureates upon them and, consequently, refuse to disburse Pell Grant program funds to the students. More to the point, SFAP apparently requests this tribunal to uphold its determination that Northeast should be sanctioned for acting in accordance with the law in its state. Regardless of the merits of New York's classification of the First Rabbinic degree as a non-baccalaureate level degree, this tribunal cannot agree with SFAP that an institution, which acted in clear compliance with governing state law, nonetheless should be punished by fine because the Department of Education disagrees with the state's law. Quite the contrary, Congress has recognized that states have a vested interest in assuring that Title IV program funds are disbursed by institutions in a manner consistent with the statutory purposes of the programs. As such, it is commonly understood that there is a partnership between the Federal and state governments in the enforcement of Title IV requirements. See In the Matter of Salt lake Community College, Dkt. No. 94-92-SP, U.S. Dep't of Educ. (March 1, 1995) (citing H.R. REP. No. 447, 102nd Cong., 2d Sess. 85 (1992), reprinted in 1992 U.S.C.C.A.N. 334, 418.

It should be made very clear that this tribunal is not ruling that institutions may violate Title IV regulations with impunity as long as an applicable conflict between the institution's governing state law and Federal law is shown. This ruling is limited by the narrow scope of the issue before this tribunal. That issue is whether an institution may be fined or otherwise punished for disbursing Title IV program funds to students who graduated from a postsecondary institution that, under state law, was not authorized to award baccalaureate level degrees, even though SFAP considered that postsecondary institution to be an institution that provided its graduates with the equivalent of a baccalaureate degree upon the completion of their course of study.

Undoubtedly, in a more appropriate forum seeking the recovery of improperly disbursed Title IV program funds, SFAP is not without a remedy for violations of Title IV regulations. However, in this case, SFAP elected to bring this action under the regulations governing Subpart G proceedings. Subpart G proceedings differ from other forums available to SFAP in several procedural aspects, but the relevant difference here is that the remedy available to SFAP for a proven Title IV statutory or regulatory violation is the possibility of imposing a fine, termination, or some other form of punitive action against an institution. It is clear that fines are imposed to punish the wrongdoer for past bad acts, discourage the wrongdoer from future offenses, and deter other potential wrongdoers.See footnote 16 *16* In this case, imposing a fine against Northeast for disbursing Title IV program funds to graduates of UTA would be at odds with the multiple purposes of punishment. Therefore, the imposition of a fine or other punitive sanction for this allegation is unwarranted.

(4)

Under Title IV regulations, except under circumstances not applicable here, an institution may disburse Pell Grant program funds to an otherwise eligible student for only *one* payment period if a requested financial aid transcript (FAT) from each eligible institution the student previously attended has not been received by the school. See 34 C.F.R. § 668.19. According to SFAP,

Northeast disbursed Pell Grant program funds to 27 students covering more than one payment period despite the fact the school had neither requested nor received FATs from all eligible institutions previously attended by the student.See footnote 17 *17* Northeast contends that none of the students cited by SFAP previously attended an institution other than Northeast, and to the extent that SFAP has evidence to the contrary, Northeast had no knowledge of those facts and, therefore, could not have known that FATs should be requested for those students.

This tribunal is unpersuaded by the school's arguments. Once SFAP has provided substantial evidence, as it has done here,See footnote 18 *18* that FATs were not in the student files of 27 students, to rebut the inference that this allegation is true, Northeast must come forward to either produce FATs or produce evidence that FATs were duly requested and/or obtained. Title IV regulations unequivocally require institutions to obtain financial aid transcripts from schools previously attended by the institution's students. It is no answer that the institution, through no fault of its own or through the school's negligence, failed to obtain the requisite documentation. Institutions act at their own peril when they award second disbursements of Title IV funds without ensuring that they have appropriately determined that a student is eligible for Title IV funds. See 34 C.F.R. §§ 668.19(a) and 690.75(a). To find otherwise would permit institutions to successfully disburse Title IV funds despite the fact that the institution had not properly determined whether students were eligible for student financial assistance.See footnote 19 *19* Accordingly, this tribunal upholds SFAP's finding that Northeast improperly disbursed Pell Grant funds to 27 students.

III

According to SFAP, Northeast processed 6 Student Aid Reports (SARs) containing the address of a postsecondary institution as the purported mailing address or residence of the student. SFAP contends that the use of these "erroneous" addresses could enable an institution to draw down Title IV funds on behalf a of student without the student's knowledge. Northeast contends that Title IV regulations do not proscribe use of mailing addresses on SARs in place of a student's residential address. Although the consequences of an institution's processing of SARs that contain addresses other than those which belong to the student could be grave, in the instances cited by SFAP such results are purely hypothetical. SFAP does not argue that Northeast drew down funds for students without the students' knowledge, only that such could have been possible. This tribunal consistently has held that fact-finding determinations must be based on factual disputes related to an alleged regulatory violation for which SFAP seeks a relevant remedy. SFAP does not cite, and the tribunal does not know of, any relevant regulation prohibiting the institution's conduct related to the evidence presented. Accordingly, SFAP's allegation is unsupported by the record.

IV

When assessing the appropriate penalty for the violation of program regulations, the tribunal must determine whether the total punishment is appropriate. In the Matter of Cosmetology Training Center, Dkt. No. 93-86-ST, U.S. Dep't of Educ. (April 14, 1994) (citing In re Beth Rochel Seminary, Dkt. No. 92-110-ST, U.S. Dep't of Educ. (1993)). In this regard, this tribunal

must consider whether the appropriate penalty in this case should include the institution's termination of eligibility to participate in Title IV programs. Given the pervasive instances of [1] falsified documents, [2] inaccurate student financial assistance records, [3] improper disbursements of Pell Grant program funds to students covering more than one payment period without obtaining an FAT, and [4] the institution's evident disregard for its fiduciary duty, this tribunal finds that termination is warranted.

In addition, under 34 C.F.R. § 668.84, an institution may be fined up to $25,000 per violation of *any* provision of Title IV or any agreement or regulation implementing Title IV. See also 20 U.S.C. § 1094(c). In assessing whether the imposition of SFAP's proposed fine is warranted, 34 C.F.R. § 668.92 requires that the tribunal consider the gravity of the institution's violation and its size. Although there is little regulatory guidance in assessing the size of an institution for purposes of determining an appropriate fine, it has been consistently recognized that an institution's size should be measured by the average amount of Title IV funds disbursed by an institution during an applicable award year. See, e.g., In the Matter of Fischer Technical Institute, Dkt. No. 92-141-ST, U.S. Dep't of Educ. (March 16, 1995); In the Matter of Bais Fruma, Dkt. No. 93-171-ST, U.S. Dep't of Educ. (March 9, 1995); Hartford Modern School of Welding, Dkt. No. 90-42-ST, U.S. Dep't of Educ. (January 31, 1991). In that regard, the most recent award year for which complete data is available, 1990- 91, Northeast disbursed $2,272,565 in Title IV program funds. This is an amount that is significant in relation to other institutions participating in Title IV programs during the same period.See footnote 20 *20* Consequently, the school's size is not a mitigating factor warranting the imposition of an insubstantial fine.

In assessing the gravity of the allegations this tribunal has upheld, I recognize that grave and significant Title IV violations have been proven. The findings show that Northeast undoubtedly acted contrary to the duty, trust, and confidence placed in it by ED. However, given that this tribunal has upheld the imposition of the severest sanction available to SFAP, and recognizing that the multiple purposes of punishment require that the total punishment be appropriate, the imposition of a significant fine for each instance of a proven regulatory violation in this case is unwarranted. Accordingly, Northeast shall be fined: **$50,000** for its instances of inaccurate and falsified recordkeeping, **$25,000** for its breach of fiduciary duty, and **$25,000** for improperly disbursing Pell Grant program funds to students covering more than one payment period despite that fact the school had neither requested nor received financial aid transcripts from all eligible institutions previously attended by the school's students.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED, that Northeast Institute for Judaic Studies' eligibility to participate in programs authorized under Title IV of the Higher Education Act of 1965, as amended, is terminated. It is FURTHER ORDERED that the institution immediately and in the manner provided by law, pay a fine in the amount of $100,000 to the United States Department of Education.

SO ORDERED:

Richard I. Slippen
Administrative Judge

Issued: May 2, l995
Washington, D.C.

Footnote: 1 *1The Secretary of Education is authorized to terminate the eligibility of institutions to participate in Title IV programs under Section 487(c)(1)(D) of the HEA (Pub. L. No. 89- 329, 79 Stat. 1219, as amended by Section 451(a) of the Education Amendments of 1980, Pub. L. No. 96-374, 94 Stat. 1367 (to be codified at 20 U.S.C. § 1094(c)(1)(D))). The programs include: Pell Grant, 20 U.S.C. § 1070a; Perkins Loan, 20 U.S.C. § 1087aa; College Work Study (CWS), 42 U.S.C. § 2751; Supplemental Educational Opportunity Grant(SEOG), 20 U.S.C. § 1070b; and the Guaranteed Student Loan Programs(GSL), 20 U.S.C. §§ 1071, 1078-1, and 1078-2.*

Footnote: 2 *2SFAP reduced its proposed fine against Northeast from $1,270,000 to $1,255,500 as a result of evidence offered by the school during the evidentiary hearing substantiating one of the school's contentions.*

Footnote: 3 *3To the extent that Northeast renews its arguments concerning the insufficiency of SFAP's notice, the tribunal considers that issue thoroughly exhausted by the earlier finding contained within the tribunal's June 17, 1994 Order, wherein the tribunal concluded that SFAP's Notice complied with the requisite administrative notice requirements of Title IV regulations.*

Footnote: 4 *4In Subpart G -- fine, limitation, suspension, and termination -- proceedings, SFAP has the burden of persuasion. 34 C.F.R. § 668.88(c)(2).*

Footnote: 5 *5Cf. In the Matter of Bais Fruma, Dkt. No. 93-171-ST, U.S. Dep't of Educ. (March 9, 1995) (recognizing that where SFAP's evidence of falsification is based solely on the uncorroborated documents of other institutions, the trier-of-fact cannot assume that the records of another institution are more reliable than the records of the Respondent).*

Footnote: 6 *6According to SFAP, Northeast disbursed Pell Grant funds to 20 ineligible students. SFAP seeks to fine the institution $10,000 for each ineligible student.*

Footnote: 7 *7 SFAP may have assumed that evidence that Northeast's students enrolled in courses at Northeast which were previously completed elsewhere is sufficient evidence, per se, that the students were ineligible to receive Pell Grant program funds, however, this tribunal finds that it is without jurisdiction to adopt this kind of per se rule, which is not compelled by statutory or regulatory authority.*

Footnote: 8 *8Factors governing student eligibility include, inter alia, whether the student [1] is enrolled in an eligible program, [2] has a high school diploma or recognized equivalent, [3] is above the age of compulsory school attendance, [4]is maintaining satisfactory progress in his program, [5] maintains the appropriate citizenship status, and [6] is not in default on any loan made under Title IV. See 34 C.F.R. § 668.7.*

Footnote: 9 *9To the extent that SFAP renews its arguments, under this finding, regarding the alleged falsification of records by the institution of the same student files evaluated supra, this tribunal considers those issues thoroughly exhausted by its earlier findings and, as such, will not review those arguments here.*

Footnote: 10 *10See SFAP Prehearing Br. at 6.*

Footnote: 11 *11Although SFAP argues that the students were enrolled in multiple institutions only on paper, and in fact did not attend any of the institutions for which they received Pell Grant funding, that issue is not before the tribunal under this finding. Accordingly, the tribunal has assumed that the students actually attended the institutions the evidence shows they were enrolled in.*

Footnote: 12 *12During the course of this proceeding SFAP has reduced the number of alleged improper Pell Grant disbursements under this finding from 54 to 53 and, finally, to 52. See SFAP Post-Hearing Br. 18 & n. 22.*

Footnote: 13 *13See ED Ex. 116 at 2, 4.*

Footnote: 14 *14See Tr. 33-36.*

Footnote: 15 *15SFAP Post-Hearing Br. at 19.*

Footnote: 16 *16See In the Matter of Bais Fruma, supra, at 15; In the Matter of United Talmudical Academy of Monsey (NY), Dkt. No. 93-11-ST, U.S. Dep't of Educ. (May 4, 1994).*

Footnote: 17 *17See SFAP Post-Hearing Br. 21-22 & n.27.*

Footnote: 18 *18In each of the 27 instances, SFAP presents evidence, through the use of Pell Grant Program Payment Summary reports, that a student received Pell Grant funds covering at least an entire award year from Northeast as well as having received Pell Grant funds from a previously attended institution.*

Footnote: 19 *19Notably, requiring Northeast to rebut or meet the presumption that SFAP's allegation is true does not impermissibly shift the burden of proof to the institution. The risk of nonpersuasion remains with SFAP. See, e.g., Black's Law Dictionary 1067 (5th ed. 1979) (a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof).*

Footnote: 20 *20See Tr. 199 - 201.*