



student having reached the midpoint of the term. For this violation ED has requested Kane to refund \$1,000.

## FACTS

On November 3, 1992, a second Pell Grant payment in the amount of \$1,000 was disbursed to student number 24. As of that date, the student had attended 270 hours of classes and had accrued 78 hours of excused absences, for a completion of 348 hours of the 750 hour course. The student later withdrew from the program, and the last day of attendance was on November 17, 1992.

According to Kane's attendance policy, a student could be excused from 20% of the instructional hours. To justify this second disbursement Kane combined: 1) the number of hours attended as of the last day of attendance, November 17, (294 hours) and, 2) 91 hours of excused absence, the maximum number of excused absence hours permitted for each student (20% of the 456 hours that had been offered as of the last date of attendance). Kane argued that the sum of the hours attended and hours of excused absence provided a total attendance of 385 hours. Using this procedure, Kane contended that the student had completed more than half the 750 hour program at the time of withdrawal and, therefore, was entitled to the second disbursement.

## DISCUSSION

Kane uses a system of clock hours, rather than academic terms, for its educational program. Because its program is less than an academic year (less than 900 hours), its payment

period for Pell funds for a student should be as follows --

(i) The first payment period must be the period of time [in] which the student completes the first half of his or her educational program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her educational program.

34 C.F.R. § 690.3(b)(3).

The amount of the student's Pell Grant payment is not in dispute here; only its timing is in dispute. SFAP maintains that Kane was premature in its second disbursement and I agree. The regulations clearly delineate the appropriate determination of the two payment periods. The second of two payments cannot be disbursed until at least half of the program has been completed. In this instance, the institution could properly combine the hours of excused absences with the hours of attendance to identify the point at which the student had completed the first half of the program (375 hours), thus becoming eligible for the second Pell Grant payment. However, the number of excused absence hours is not unlimited; it cannot exceed the lesser of the amount credited to the student or the maximum number allowed by the institution.

Kane permitted its students to have no more than 20% excused absences. Since this was a 750 hour program, student number 24 could accrue up to 150 hours (20% of 750) of excused absences and have this amount added to the number of hours of actual attendance to compute the mid-point of completion. At the time of payment, however, student number 24 was credited with only 78 hours of excused absences. This figure, combined with the 270 hours of attendance, indicates the student had completed only 348 hours. Therefore, the student had not completed half of the program as of the November 3rd disbursement date and was not eligible for the second Pell Grant disbursement. Accordingly, Kane must repay \$1,000 to ED.

## FINDING 6

In Finding 6, SFAP alleges that Kane disbursed \$2,626 in Stafford Loan funds to two students at a time when both were on a leave of absence from the institution. SFAP maintains that these students were not eligible to receive these funds while in that status and argues that Kane must repay that amount to the current holders of those Stafford loans. Also, Kane must repay ED interest and special allowances of \$390.

## FACTS

According to the FPRD, student number 1 was on a leave of absence from January 28 - June 22, 1992, and on February 12 Kane credited \$1313 in Stafford funds to this student's account. Student number 11 was on a leave of absence from October 28 - December 9, 1991,

and Kane credited that student's account with \$1313 in Stafford funds on December 4. To justify these payments, Kane refers to several provisions of the regulations in effect at that time: 34 C.F.R. §§ 682.604(b); 682.201(a); and 682.605(c). The school believes that these regulations support its position that a student on a leave of absence was considered to be enrolled in the school and was therefore eligible to have loan proceeds credited to his or her account. In December, 1992, the governing regulation, 34 C.F.R. § 682.604, was amended, and all parties now agree that, without question, "[a] school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence...." 34 C.F.R. § 682.604(c)(4).

## DISCUSSION

Kane argues that at the time of the two disbursements in question, the regulations did not explicitly prohibit a school from crediting a student's account with a guaranteed student loan while the student was in a leave of absence status. One might argue that common sense would dictate that the opposite result should prevail, that a student who is not attending classes because of having been granted a leave of absence should not be receiving funds from, or become obligated for, a student loan. Nonetheless, apparently this area of the regulations was sufficiently ambiguous that it was the subject of a Comment in the Appendix of the November 10, 1986, Federal Register which promulgated the final rules for 34 C.F.R. Parts 682 and 683. 51 Fed. Reg. 40,886, 40,946 (1986). The Appendix contains a response to one of the comments regarding students in a leave of absence status. There the writer clearly states that a school may not release a loan check to a student's account when the student has been granted a leave of absence.

Kane's justification for crediting the student's account is premised on the fact that the students were in a proper leave of absence status at the time of the fund transfers. In this regard, the FPRD and the Program Review Report (PRR) assert that these two students were not in a proper leave of absence status because of Kane's failure to comply with the provision of the regulations that addresses leaves of absence. The regulation permits a school to approve a leave of absence if the request is submitted in writing and is for no more than 60 days, with the exception that a leave of absence may be extended to no more than 6 months if supported by a physician's statement. 34 C.F.R. § 682.605(c).[See footnote 3 3](#) In this instance, the PRR charges that neither student's leave of absence was accompanied by a written request from the student and the FPRD states that student number 1's leave of absence was for more than the allowable 60 days.[See footnote 4 4](#) Kane has not rebutted any of these findings. Since neither leave of absence was properly authorized, both students should have been considered to have withdrawn as of the first day of their absence. 34 C.F.R. § 682.605(b).

Accordingly, the interpretation Kane gave to the regulation that addresses whether or not a student in a leave of absence status is an eligible recipient of a Stafford loan is irrelevant because the students could not be placed in a leave of absence status as a result of Kane's noncompliance with the applicable regulatory provisions. The students should have been considered withdrawn from Kane and, thus, ineligible for the loan payments. Therefore, Kane is liable to the lenders for \$2626 in improperly disbursed Stafford loans and indebted to ED for \$390 for interest and special allowances.

## FINDINGS

I find the following:

Kane improperly disbursed a second Pell Grant payment of \$1,000 to student number 24 prior to that student having completed one- half of the program.

Kane improperly credited the accounts of students number 1 and 11 with \$1,313 each at a time when they were improperly maintained on the school's attendance rolls as being in a leave of absence status.

## ORDER

Based on the foregoing, it is hereby--

ORDERED, that Kane repay \$1,390 to the applicable Title IV program account and \$2,626 to the current holders of the Stafford promissory notes.

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Richard F. O'Hair

Issued: October 21, 1994  
Washington, D.C.

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S E R V I C E

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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 The FPRD required the payment of the following amounts to ED:*

*Finding 3 - \$275  
Finding 4 - \$1327  
Finding 6 - \$390  
Finding 10 - \$1,000*

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*[Footnote: 2](#) 2 The FPRD also proposed that Kane pay informal fines in the amount of \$2825 because of the cited violations. Kane appealed those proposals. This proceeding under 34 C.F.R. Part 668, Subpart H, does not permit the assessment of fines. Therefore, they will not be addressed further in this decision.*

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*[Footnote: 3](#) 3 The regulation governing leaves of absence remains unchanged from the version in effect at the time of Kane's approval of these leaves of absence.*

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*[Footnote: 4](#) 4 The original leave of absence was for January 28 - March 2, 1992, but was later extended to June 23.*