IN THE MATTER OF
Microcomputer Technology Docket No.94-88-SA
Institute, Student Financial
Respondent. Assistance Proceeding

Appearances: Peter S. Leyton, Esq., Ritzert & Leyton, of Fairfax, Virginia for Microcomputer Technology Institute.

Stephen M. Kraut, Esq., Office of the General Counsel, Washington D.C. for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

On March 22, 1994, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a **final audit determination** (FAD) finding that Microcomputer Technology Institute (Microcomputer) improperly disbursed $8,139,146 in Pell Grant Program funds to incarcerated students in Texas state prisons for the period July 1, 1988, through June 30, 1993, in violation of Title IV of the Higher Education Act of 1965, as amended (Title IV). See 20 U.S.C. § 1070 et seq.

The Pell Grant Program permits institutions to award grants to help eligible students meet the cost of their postsecondary education. The amount of a Pell Grant that a student is eligible to receive is based, in part, on the student's cost of attendance. Under the program, institutions may include, as a student's cost of attendance, "tuition and uniform compulsory fees normally charged a full-time student" and an allowance for "room and board costs, books, supplies, transportation, and miscellaneous expenses incurred by the student."See footnote 1 *1*

In its determination of cost of attendance, Microcomputer designated $4,000 as the cost of attendance for the school's incarcerated students for award years 1988-89 through 1990-91.See footnote 2 *2* For award years 1991-92, and 1992-93, Microcomputer used $4,200 as its incarcerated

students' cost of attendance.See footnote 3 *3*

According to SFAP, Microcomputer included improper cost of attendance items in its calculation of Pell Grant awards for the institution's incarcerated students. In support of its position, SFAP shows that the enrollment contract signed by Microcomputer's students provided that if a student made every effort to receive Federal funding or some other social service funding and was rejected or not eligible for funding, a tuition waiver would be granted by the school. As such, according to SFAP, the enrollment contract is clear evidence that no incarcerated student was ever required to pay Microcomputer's tuition and fee charges. To bolster its position, SFAP relies

on a clause in the enrollment contract that provided that at "no time will cash payment by the student be sought while in school or after the student is released." In addition, SFAP presents evidence showing that on May 17, 1991, Microcomputer requested exemption from Texas state licensing requirements. In granting the exemption, the State noted that the exemption is pre-conditioned by the State's requirement that Microcomputer's incarcerated students would not be required to finance the vocational education training provided by the institution. This practice, according to SFAP, resulted in no incarcerated student ever incurring an obligation to pay Microcomputer's tuition and fees. In that regard, SFAP determined that tuition was not charged to the incarcerated students and, since there was no bona fide tuition charged to the students, the nominal tuition established by the institution to obtain maximum Pell Grant awards for the incarcerated students was not a proper element of the institution's cost of attendance.

In addition, and for substantially similar reasons, SFAP concluded that although Microcomputer charged books, supplies, and room and board as elements of its cost of attendance, no incarcerated student had in fact incurred these costs. Consequently, SFAP determined that those expenses should not have been included in the school's calculation of cost of attendance. Accordingly, the FAD requires Microcomputer to repay ED all Pell Grant Program funds disbursed from July 1, 1988, through June 30, 1993.

In its defense, Microcomputer argues that its cost of attendance calculation is permitted by the governing statutory provision of Title IV, 20 U.S.C. § 1070a-6(5). The linchpin of Microcomputer's position is its argument that Section 1070a-6(5) defines "cost of attendance" as the tuition and fees *normally* charged a full time student at the institution and, as a consequence, permits institutions to use, as an element of its calculation of a student's cost of attendance, a tuition charge that is normally or customarily charged students, instead of only what is *actually* charged students. In this respect, Microcomputer contends that it may calculate the cost of attendance for its incarcerated students based, in part, on an amount for tuition and fees normally charged to the school's non-incarcerated students. Although the institution's interpretation of the statutory term "normally" may appear facially plausible, I do not agree with Microcomputer that the issue before me turns on the statutory

interpretation of "cost of attendance." Rather, the question presented is whether the evidence in the record carries the institution's burden of proof that the incarcerated students who participated in Microcomputer's vocational education program assumed an obligation to pay the items included in the institution's cost of attendance.See footnote 4 *4*

This is not a case of first impression. This case is remarkably similar to a recently decided case, wherein the arguments supporting Microcomputer's position were carefully considered and rejected by an administrative law judge (ALJ).See footnote 5 *5* See In the Matter of Education Management Systems, Inc. d/b/a/ Chenier, Dkt. No. 94-31-SA, U.S. Dep't of Educ. (June 22, 1994) (Chenier). In Chenier, the ALJ held that where an institution: [1] is precluded from charging its students tuition under an exemption from state licensure, [2] agrees to provide vocational education services for a private entity managing a state's correctional facilities, which itself is precluded by a contractual agreement with the state from charging incarcerated students tuition or fees for the provision of vocational education services, and [3] has a registration or enrollment contract with its students that expressly provides that the student is not responsible

for tuition or fee charges, the institution may not include tuition and fee charges as elements of the school's cost of attendance. Based on the three conditions noted, the ALJ determined that it was clear that the institution's students were not legally obligated to pay tuition or fees to the institution and, thus, the disbursement of Pell Grant Program funds to those students was improper. An analysis of the record in this case reveals facts virtually identical to those in Chenier, and I find that the rule enunciated therein applies equally here.

The parties do not dispute that Microcomputer was authorized by the State of Texas to provide vocational education to incarcerated students by virtue of an exemption from licensure issued by the State. That exemption provided that Microcomputer could offer courses of instruction financed or subsidized from various sources other than the incarcerated student. Nor do the parties dispute that the State contracted with two private entities, the Wackenhut Corrections Corporation and the Corrections Corporation of America, for, inter alia, the provision of vocational education services at no cost to the State's incarcerated students, and that Microcomputer contracted with the private-sector prison operators to provide those services. In addition, Microcomputer's enrollment contract, which most of Microcomputer's incarcerated students signed, provided that at no time would "cash

payment" by the student be sought in the event that the student was not able to obtain funding for tuition or fees from Federal grant funds or other social service agency sources. Consequently, it is abundantly clear that the analysis in Chenier is directly applicable to the facts in this case concerning Microcomputer's tuition and fee charges.

Regarding Microcomputer's argument that the institution may charge an allowance for living expenses, supplies, and books as elements of its cost of attendance, I am convinced that the rule followed in Chenier is correct. There, the ALJ held that where: [1] the correctional facility provides housing, food, clothing, transportation and other basic living necessities at no cost to the inmate, and [2] the maximum amount in expenses the inmates could incur in a given academic year is below the amount required for the award of a Pell Grant, an institution may not include as a cost of attendance an allowance for expenses other than tuition and fees.

Under 20 U.S.C. § 1070a(b)(5) (1990), an institution could not award an eligible student Pell Grant funds totaling less than $200 in a given award year. In addition, the amount of the Pell Grant awarded to a student could not exceed 60% of the student's cost of attendance. 20 U.S.C. § 1070a(b)(3). Although Microcomputer designated $1,700 and $1,800 as an allowance for expenses in its calculation of the incarcerated students' cost of attendance, the Department's Office of Inspector General reviewed Microcomputer's records and determined that the incarcerated students' actual expenditures for the 22 week academic year totaled approximately $155. The state prison system provided most goods and services, including room and board, used by the inmates at no cost. Consequently, at most, Microcomputer could have designated $155 as an allowance for the students' expenses. In this respect, as a result of the limitation under Section 1070a(b)(3), Microcomputer could not disburse Pell Grants in excess of $93, or 60% of $155. However, in the final analysis, Microcomputer was precluded from awarding any Pell Grant funds to its incarcerated students since Section 1070a(b)(5) prohibits the disbursement of Pell Grants where the student's Pell Grant award totals less than $200 in a given award year.See footnote 6 *6* Accordingly, based upon the evidence, I find that Microcomputer failed to meet its

burden of proving that the institution properly included tuition and other fee expenses as elements of its cost of attendance for the school's incarcerated students. Therefore, Microcomputer improperly disbursed Pell Grant Program funds to those students.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Microcomputer Technology Institute pay to the United States Department of Education the sum of $8,139,146.00.

SO ORDERED:

Ernest C. Canellos
Chief Judge

Issued: May 5, 1995
Washington, D.C.

Footnote: 1 *1 20 U.S.C. § 1070a-6(5).*

Footnote: 2 *2 Microcomputer designated tuition and fee charges of $2,300, and room and board, books, supplies, and other expense charges of $1,700.*

Footnote: 3 *3 Microcomputer designated tuition and fee charges of $2,400, and room and board, books, supplies, and other expense charges of $1,800.*

Footnote: 4 *4 In this proceeding, the institution has the burden of proving that the questioned expenditures were proper. 34 C.F.R. § 668.116(d); see also In the Matter of Sinclair Community College, Dkt. No. 89-21-S, U.S. Dep't of Education (Decision of the Secretary September 26, 1991). Consequently, to sustain its burden, the institution must present a compelling showing that its calculation of cost of attendance meets the requisite statutory requirements.*

Footnote: 5 *5 On July 21, 1994, the Respondent filed an appeal of the ALJ's decision with the Secretary. At the time of issuance of this decision, the Secretary had not acted on the appeal.*

Footnote: 6 *6 The Pell Grant Program has undergone significant changes subsequent to the award years at issue. The Higher Education Amendments of 1992, Pub. L. No. 102-325, 106 Stat. 479, eliminated the 60% cost of attendance limitation. In addition, the Violent Crime and Law Enforcement Act of 1994, which applies to periods of enrollment beginning on or after September 13, 1994, amended the Higher Education Act of 1965 by prohibiting institutions from awarding Pell Grants to individuals who are incarcerated in any Federal or state penal institution. See Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20411(a), 108 Stat. 1796, 1828.*