IN THE MATTER OF TRAVEL UNIVERSITY INTERNATIONAL, Respondent.

Docket No. 94-99-SP
Student Financial Assistance Proceeding

DECISION

Appearances: Nancy Chappie, President, for Travel University International.

Jennifer L. Woodward, Esq., Office of the General Counsel, for the Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Richard F. O'Hair

Travel University International (TUI) participates in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the Office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). On April 18, 1994, SFAP issued a Final Program Review Determination (FPRD) for TUI. The findings in the determination are based on the program review report for the 1993-94 award year. TUI filed a request for review on May 31, 1994. Both parties filed submissions to this tribunal in response to the Order Governing Proceedings.

SFAP contends that TUI is liable for overawarded Pell Grants because the school did not make a reasonable attempt to comply with the changes implemented by P.L. 102-325 in that it did not reduce its Pell Grant disbursements in accordance with the "30 week" rule.

TUI argues that it is not liable for overawarded Pell Grants because the school made a reasonable attempt to comply with the changes implemented by P.L. 102-325 in that it corresponded with Region IX several times, despite the fact that ED had not published any detailed instructions or regulations implementing the statutory changes. Under 34 C.F.R. § 668.116(d), TUI has the burden of proving that its questioned expenditures were proper and that it complied with program requirements.

The Higher Education Amendments of 1992 changed the definition of the term "academic year," as it applies to programs authorized under Title IV. 20 U.S.C. § 1088(d). The

new definition required an "academic year" to consist of at least 30 weeks of instruction time (the 30 week rule), and during such period of time a full-time student is expected to complete a specific number of hours, depending on how the institution measured its program length. 20 U.S.C. § 1088(d)(2).

The parties agree that because TUI provided programs of instruction that varied between 22 and 27 weeks in length, it did not satisfy the 30 week rule and, thus, was required to reduce its Pell Grant disbursements proportionately after July 1, 1993. TUI concedes that it disbursed Pell Grant overawards in the amount of $11,139 during the period from July 1993 to November 1993. For its part, SFAP acknowledges that no regulations or detailed instructions as to how to calculate Pell Grant awards for periods of less than 30 weeks were issued during this time frame. All institutions with less than 30 week programs were told that if they made a reasonable effort to comply with the statutory changes, they would be held harmless from any liability for Pell Grant overawards. However, there was no explanation of what constituted a reasonable attempt to comply. Thus, the central issue in dispute is whether TUI made a reasonable attempt to comply with the changes implemented by P.L. 102-325 .

TUI offers substantial evidence indicating its attempts to ascertain the effect of the statutory changes on its disbursement of Pell Grants. For example, Nancy Chappie, the president of TUI, asserts that in July 1993 she called ED's Region IX to determine whether the new reauthorization law had gone into effect, and that Carol Engle of Region IX told her that nothing had been printed yet. In August 1993, Ms. Chappie sought assistance from Earle Grovatt & Associates (EGA), an outside consultant that assisted the school in distributing student financial assistance and complying with federal laws. EGA gave the same answers that Carol Engle had given. Also in August 1993, TUI's Honolulu staff called Region IX and was told that it did not know when the new law would become effective. In September 1993, Ms. Chappie again called Ms. Engle, who reiterated that ED had not published any guidance on how to comply with the 30 week rule. After receiving a telephone call from EGA stating that TUI may have been overawarding its Pell Grants, Ms. Chappie again called Region IX on November 8, 1993. When asked if TUI had been calculating its Pell Grant awards incorrectly, Ms. Engle replied, "[a]bsolutely no [sic]. I would have been aware if you were doing it wrong, because I personally check your packages." The next day, Ms. Chappie called several financial aid experts around the country in order to determine if TUI had been overawarding Pell Grants and to find out if ED had published anything on the new law. The "experts" told Ms. Chappie that nothing had been published yet. Moreover, no one knew exactly how to reduce Pell Grant awards for students attending for less than a full academic year. After EGA again suggested to Ms. Chappie that she may have been overawarding Pell Grants, she called Region IX on November 12, 1993. This time, Region IX told her that, indeed, she may have overawarded some Pell Grants.

SFAP does not deny the truth of most of these assertions, and I am persuaded that TUI made many attempts to ascertain the effect of the statutory changes on its disbursement of Pell Grants. Nor does SFAP deny that Dear Colleague letter GEN-93-33, issued in November 1993, acknowledged the confusion in calculating 1993-94 Pell Grant awards resulting from ED's delay in providing guidance on the new law. The Dear Colleague letter went on to state, "[w]e will

adopt a 'hold harmless' position with regard to Pell calculations made before the publication of final regulations on this topic, as long as you made reasonable efforts to implement the new statutory provisions."

While the evidence demonstrates that TUI made many efforts to ascertain the effect of the new law on Pell Grant calculations, the school did not change its Pell Grant calculations in any way

before November 1993, raising the question of whether or not this constituted a reasonable effort to implement the new statutory provisions. Even if the school could not obtain any guidance on the new law, the reasonableness standard described above required it to make reasonable efforts to implement the new statutory provisions, even if this required the school to read the statute and make its own "best guess" as to how to implement it.

Nonetheless, I am persuaded that TUI has satisfied this reasonableness standard. For one thing, ED itself admitted in the Dear Colleague letter that its delay in promulgating the policy for calculating reduced Pell Grant awards created "confusion." Additionally, Carol Engle's declaration states, "[n]o representative of Region IX could have assured [Nancy Chappie] she was correctly calculating her Federal Pell Grant awards. Region IX had not yet received detailed instructions for implementing the '30 week rule' when the 2 reimbursement packages in question were received."See footnote 1 *1* As Respondent correctly notes, if Region IX itself did not know how to implement the 30 week rule during this time period, a school that actively sought assistance from Region IX and elsewhere should not be punished retroactively for failing to correctly anticipate the standards later promulgated by ED.

In addition, the applicable statutes are not entirely clear in determining either whether TUI students were attending less than full time, or how TUI should have reduced Pell Grant payments even if its students were deemed to be less than full-time. SFAP cites 20 U.S.C. § 1088(d)(2) for the proposition that students whose course of study is less than 30 weeks in length are not full-time students, but provides no authority for this proposition. In fact, § 1088(d)(2) states only that the term "academic year" requires a minimum of 30 weeks of instructional time for a full-time student. It does not state that students whose course of study is less than 30 weeks long are not full-time, but only that their course of study does not constitute an "academic year." Therefore, the fact that TUI's students attended for less than 30 weeks does not necessarily mean that they were not full-time students, but only that their course of study did not constitute an academic year . This difference is important, because 20 U.S.C. § 1070a(b)(2)(B) states that students who do not attend school on a full-time basis during an academic year shall receive a Pell Grant award that is reduced in accordance with a schedule

established by the Secretary of Education through a regulation that has been published in the Federal Register.See footnote 2 *2* Thus, although TUI's students did not attend for an "academic year," as defined in § 1088(d)(2), this does not necessarily mean that they were not full-time students or that their Pell Grants had to be reduced under § 1070a(b)(2)(B). SFAP's assertions concerning TUI's knowledge of the existence of the 30-week rule because of its discussion at various workshops and in handbooks fail to address this ambiguity.

Even assuming that TUI's students were less than full-time under these statutes, 1070a(b)(2)(B) does not appear to authorize a school to reduce its Pell Grant awards except in accordance with a schedule established by the Secretary through a regulation that has been published in the Federal Register. TUI had no such guidance during the five month period in question. As a result, SFAP's argument that TUI made "no effort" to comply with the new statute ignores not only the efforts made by the school as outlined above, but also the fact that the school was not even sure whether the Pell Grant award reductions applied to TUI students or whether it had any legal basis upon which to reduce those awards.

Moreover, as noted above, ED adopted a "hold harmless" position with regard to Pell Grant calculations made before the publication of final regulations, as long as the school made reasonable efforts to implement the new statutory provisions. TUI made numerous attempts to ascertain the impact of these provisions and to determine whether or not it was calculating its Pell Grant awards correctly. This was not an institution that tried to circumvent the law (in fact, it was the school that notified the ED on November 12, 1993, that it may have overawarded Pell Grant funds).

Altogether, ED's initial failure to promulgate guidelines for implementing the new statute, the admitted "confusion" surrounding the new law, the ambiguity as to whether it even applied to TUI's students, the "hold harmless" position adopted by ED, and the school's many attempts to ascertain the impact of the new statute both with ED personnel and with others , satisfy TUI's duty to make a reasonable effort to implement the new law.

For these reasons, TUI is relieved of any duty to refund to the U.S. Department of Education the $11,139 requested in the FPRD.

ORDER

Based on the foregoing, it is hereby--

ORDERED, that Travel University International is relieved of any duty to refund to the U.S. Department of Education the $11,139 requested in the final program review determination.

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Judge Richard F. O'Hair

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

S E R V I C E

A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

Nancy Chappie
President
Travel University International

3655 Ruffin Road
Suite 225
San Diego, CA 92123

Jennifer L. Woodward, Esq.
Office of the General Counsel
U.S. Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110

Footnote: 1 1 Region IX had approved two reimbursement requests submitted by TUI during the five month period in question. TUI argues that ED's approval of these requests should prevent the Department from pursuing these funds now. Nevertheless, the October 29, 1993, reimbursement approval letter from Region IX explicitly states that approval of the reimbursement does not limit ED's right to later determine that these funds were improperly expended and recover the funds through a program review.

Footnote: 2 2 In its reply brief, SFAP accuses TUI of "confus[ing] the length of an academic year with the full or part time status of a student" because TUI discusses 20 U.S.C. § 1070a(b)(2)(B). However, SFAP has provided no authority whatsoever for the proposition that students who attend a course of study for less than 30 weeks must receive reduced Pell Grant awards. 20 U.S.C. § 1088(d) simply does not contain such a requirement. 20 U.S.C. § 1070a(b)(2)(B), discussed by TUI, is the only statute cited by either party that even remotely could provide authority for such a reduction, and that connection is highly tenuous at best.