UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of **Docket No. 95-101-SP**

IVY TECH STATE COLLEGE, Student Financial Assistance Proceeding
Respondent.

PRCN: 94305054

Appearances: Leslie H. Wiesenfelder, Esq., Dow, Lohnes, & Albertson, Washington, D.C., for Ivy Tech State College.

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

Before: Judge Richard I. Slippen

DECISION

On May 9, 1995, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education issued a Final Program Review Determination (FPRD), finding that Ivy Tech State College (Ivy Tech) violated several provisions of Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et. seq.*, and its implementing regulations. Only one finding of the FPRD remains in issue; namely, that Ivy Tech allegedly miscalculated its students' average cost of attendance for the 1991-92 school year. SFAP asserts that this miscalculation resulted in the school over-awarding Pell Grant funds to its students. Respondent asserts that this finding of the FPRD should be reversed.

A student's cost of attendance is defined as "the tuition and uniform compulsory fees normally charged a full-time student at the institution at which the student is in attendance for any award year [plus certain allowances]." 20 U.S.C. § 1070a-6(5)(A) (1991). Furthermore, both parties rely on guidance from *The 1991-92 Federal Student Financial Aid Handbook* (Handbook). As the Handbook states, when calculating students' cost of attendance for Pell Grant purposes, ". . . a school may use either the actual or the average amount charged for tuition and fees for a full academic year." Handbook, at 4-14. Since both parties agree that Ivy Tech

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was legally authorized to use students' average tuition to calculate cost of attendance, the issue becomes whether the school properly determined its students' average tuition and fees.

SFAP concedes that "[i]n the abstract, Ivy's method of determining the amount of tuition and fees it normally charged its full-time students would be legally authorized . . . because, in the abstract, that method was rationally based." SFAP Brief, at 9. Ivy Tech asserts that this SFAP admission illustrates that the school ". . . has met its burden under the applicable legal standard." Respondent Brief, at 2. To support this claim, Ivy Tech cites to a decision by this tribunal, *In Re Mount Wachusett Community College*, Dkt. No. 94-102-SP, U.S. Dep't of Educ. (September 1, 1995). In *Mount Wachusett*, the judge stated that "this tribunal is obliged to finding violations of law, not violations of statements of policy." *Id*., at 8 (citing *In Re Baytown Technical School, Inc*., Dkt. No. 91-40-SP, U.S. Dep't of Educ. (Initial Decision) (January 13, 1993)). Without more, this case supports Ivy Tech's assertion that, because their policy did not violate a statute or regulation, the school should not be penalized for its method of calculating average cost of attendance.

Nevertheless, there are two fundamental reasons why Ivy Tech cannot successfully rely on *Mount Wachusett*. First, in *Mount Wachusett*, the judge stated that regardless of whether a school uses an average or an actual cost of attendance, the figure must be based on ". . . costs which are actually incurred by the students." *Mount Wachusett*, at 6. Regardless of the reasonableness of Ivy Tech's method of calculation, therefore, the calculated average must reflect tuition costs that were *actually incurred*. As stated below, because the school actually did overestimate each student's credit hour enrollment for the 1991-92 award year, Ivy Tech inappropriately increased the average cost of attendance.

Second, in *Mount Wachusett*, the judge acknowledged that not only was the school's method of calculation not prohibited by law, but that the school *also* demonstrated that ". . . this practice is not an improper expenditure of Federal Student Financial Aid." *Mount Wachusett*, at 8. As previously stated, in the present case it remains in issue whether the school over-awarded Pell Grant money, creating an improper expenditure absent in *Mount Wachusett*. To decide whether the school over-awarded students Pell Grant funds during the 1991-92 award year, it is necessary to examine each of the four Ivy Tech defenses to SFAP's charge.

I. SFAP Is Not Legally Authorized to Dictate How to Calculate Cost of Attendance

Ivy Tech accurately asserts that SFAP "shall not have the authority to prescribe regulations . . ." dictating how to calculate a student's cost of attendance. In the FPRD, however, SFAP does not mandate that the institution follow a specific formula to calculate cost of attendance, nor does SFAP exceed its powers by promulgating regulations governing cost of attendance. Rather, SFAP requires that the school's determined cost of attendance accurately reflects costs that students actually incurred. See Mount Wachusett, at 6 (stating that averages must reflect costs actually incurred). Since SFAP does not impose requirements not included in 20 U.S.C. § 1070a, SFAP is not acting outside its promulgated authority.

II. SFAP Used the Wrong Year in Calculating Tuition Costs

Furthermore, Ivy Tech defends SFAP's charge by asserting that SFAP used the wrong year to evaluate the school's determination of average tuition and fees. The school asserts that to make a fair assessment, SFAP should only be entitled to use information available to Ivy Tech prior to the 1991-92 school year, when the average cost of attendance was estimated. As stated above,

however, the lawfulness and reasonableness of Ivy Tech's method of calculation for average tuition and fees is not under attack. Both parties agree that, using the information Ivy Tech had available at the time, the school estimated its students' average tuition in a manner that was not legally prohibited. Nevertheless, the school's assertion that ". . . SFAP's view of the correctness of Ivy Tech's 'initial assumptions' cannot stand because assessing the validity of those assumptions can only fairly be done based on information Ivy Tech had prior to the beginning of the 1991-92 award year. . ." is not convincing.

Both parties have admitted the lawfulness and even the reasonableness of Ivy Tech's actions. If it is apparent that the institution overestimated the number of credit hours its average students take, and this overestimate resulted in an over-award of Pell Grant money, SFAP is entitled to a reimbursement for the over-awarded funds. This tribunal has that ". . . the recovery of misused Federal funds is 'intended to promote compliance with the requirements of the grant program [and therefore,] a demand for repayment is more in the nature of an effort to collect upon a debt than a penal sanction.'" *In Re Macomb Community College*, Dkt. No. 91-80-SP, U.S. Dep't of Educ. (May 3, 1993), at 7-8 (quoting *Bennett v. Kentucky Dep't of Educ*., 470 U.S. 656 (1985)). Through its revised submission of Pell Grant awards, Ivy Tech admits that it overestimated the actual number of credit hours taken by its students. The total difference is consistent with SFAP's figure of $432,351.88. The argument that the school should not be liable for this money that was, even according to the revised Ivy Tech submissions, actually over- awarded must be rejected. Merely by demonstrating that its method of estimating tuition was *not legally prohibited*, an institution has not necessarily proven that its Title IV expenditures were proper.

III. SFAP's Data is Skewed

Respondent asserts that by taking into account only Pell Grant recipients in figuring the average student's cost of tuition, SFAP obtained skewed average enrollment patterns for the 1991-92 school year. The school argues that Pell Grant recipients, due to greater work requirements and the inability to afford child care, are able to enroll in less credit hours than average students. Ivy Tech maintains that because SFAP analyzed the credit hours taken by only the Pell Grant recipients, the resulting average enrollment patterns were deceptively low. Nevertheless, the school does not provide data to establish that this logic is factually accurate. Ivy Tech has the burden of proving that the 1991-92 Title IV expenditures were proper. 34 C.F.R. § 668.116(d). The school has failed to prove that average credit hours would be different

had SFAP analyzed the enrollment patterns of all of Ivy Tech's students, rather than just the Pell Grant recipients.

Ivy Tech further maintains that Pell Grant recipients would enroll in less credit hours because such students are the least likely to be able to afford child care. This argument, however, substantially weakens the school's contention that its liability should be reduced to allow for child care costs. If Pell Grant recipients are awarded more funds due to child care costs, the school cannot claim that students are unable to enroll in credit hours because they cannot afford child care.

IV. SFAP's Analysis of Ivy Tech's Programs Reaches the Wrong Conclusion

Although SFAP and Ivy Tech have thoroughly discussed the reasonableness of the school's estimated patterns of enrollment, these arguments ultimately are unnecessary. As previously stated, this tribunal accepts the reasonableness and lawfulness of Ivy Tech's method of calculating cost of attendance. Regardless of the amount of time needed to complete a one- or two-year program at Ivy Tech, the school must be able to prove that the calculated cost of attendance accurately reflects costs actually incurred by the students. *Mount Wachusett* at 6. Therefore, a statistical analysis of the amount of time necessary to obtain a degree is not relevant to what is in dispute in this matter. Instead, in determining its students' cost of attendance, Ivy Tech must be able to support its claims based on actual enrollment patterns and accurate estimates resulting from the chosen method of calculation. Moreover, Ivy Tech's assertion that this finding is an effort to impose a penalty must be rejected because SFAP is only seeking a return of funds that should not have been disbursed. See *In Re Macomb Community College* at 7-8 (explaining that the nature of such an SFAP claim is not a penalty or fine).

Finally, Ivy Tech argues that this tribunal should reduce any liability by $152,793 for child care costs. The school asserts that because its students had received their maximum Pell Grant funds for the 1991-92 award year, Ivy Tech did not find it necessary to figure child care costs into cost of attendance. Nevertheless, Respondent maintains that its submission of the Peter Rabbit School weekly charges should reduce any payment due SFAP. While this tribunal acknowledges the legitimacy of child care costs, the institution's submissions are insufficient evidence of actual expenditures. In the absence of documentation supporting that these costs were actually incurred by Ivy Tech students, this tribunal cannot reduce the institution's liability.

FINDINGS

1. While Ivy Tech's method of calculating cost of attendance for the 1991-92 award year was not legally prohibited, the school is liable for Federal funds awarded in excess of costs actually incurred by its students.

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2. Ivy Tech did not meet its burden of proving that its students incurred child care costs consistent with those charged by the Peter Rabbit School.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Ivy Tech State College repay to the U.S. Department of Education assessed over-awards of $432,255.88.

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Judge Richard I. Slippen

Dated: August 7, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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