
In the Matter of

Docket No. 95-44-SA

DUQUOIN/TREND BEAUTY COLLEGE,
Respondent.

Student Financial Assistance Proceeding
ACN: 05-00017

DECISION

Appearances: Howard Dean Allen, President, DuQuoin/Trend Beauty College, of East Alton, IL.,
for the Respondent.

Cathy L. Grimes-Miller, Esq., Office of the General Counsel, U.S. Department
of Education, Washington, D.C., for the Office of Student Financial
Assistance Programs.

Before: Thomas W. Reilly, Administrative Law Judge.

BACKGROUND

DuQuoin/Trend Beauty College (DuQuoin or Respondent) is a group of proprietary career training schools that participates in several Federal student financial assistance programs under Title IV of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. §§1070-1099c-1. DuQuoin has a main campus in Alton, IL., and three branch campuses in DuQuoin, Marion, and Mt. Vernon, IL. (The Collinsville, IL., campus was closed in January 1990.) The U.S. Department of Education's (ED) Office of Inspector General (OIG) conducted an audit at DuQuoin from March 19 - May 25, and November 26 - December 21, 1990. [See footnote 1 / A](#) final audit report (FAR) dated October 4, 1991, recommended that ED require DuQuoin to refund questioned costs of \$84,597 and refund unsupported costs of \$1,028,435 unless DuQuoin provides documentation to adequately support those costs. [See footnote 2 2](#)

However, a Final Audit Determination (FAD - ED Ex.1) issued January 4, 1995 [See footnote 3 3](#), required that

DuQuoin pay only \$79,003 in liabilities, rather than the much higher amount recommended by the OIG. The FAD found that DuQuoin violated regulations governing the use of Title IV program funds by disbursing them to ineligible students, who were ineligible due to DuQuoin's failure to establish, publish, and apply a reasonable satisfactory academic progress (SAP) policy. The \$79,003 figure represented the amount of Title IV funds disbursed to students who had not

maintained satisfactory academic progress in accordance with DuQuoin's SAP policies during the period covered by the audit. That allegation is contained in Finding 1 of the FAD, the only remaining Finding covered by the appeal [See footnote 4 4](#) in this proceeding. [See footnote 5 5](#)

DISCUSSION

To be eligible for financial assistance under Title IV programs, a student must maintain "satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress." 34 C.F.R. §668.7(a)(5) (December 1, 1987). An institution's standards for measuring whether a student is maintaining satisfactory academic progress in his or her course of study must be "reasonable." 34 C.F.R. §668.16(e). The elements the Secretary looks for in determining whether the institution's SAP standards are reasonable are set forth in 34 C.F.R. §668.16(e)(3).

During the audit, DuQuoin supplied the auditors with copies of three different SAP policies that allegedly were in effect for the three successive audit years in issue. (ED Ex.5, DuQuoin letter dated April 11, 1995.) DuQuoin claims that the SAP policy it provided to the OIG auditors was not its original SAP Policy No.1, but was merely a memorandum to its teachers discussing and referring to SAP Policy No.1. (DuQuoin Initial Brief, at 1, 3.) However, SAP Policy No.1 was intended to be attached to that memorandum, and, in any event, that document was not the document the Department relied upon in issuing the January 4, 1995 FAD. The final determinations therein were based upon the SAP Policy DuQuoin provided to ED after the audit as its "original" SAP Policy No.1. (The SAP Policy attached to the teachers' memorandum could not have been the same as the one finally submitted by DuQuoin after the audit because the effective date of the one attached to the memorandum was March 1, 1988, while the later-submitted SAP policy [submitted after the audit] had effective dates of December 23, 1987 to August 17, 1989.)

DuQuoin was unable to provide the auditors a copy of an SAP policy in effect from July 1 - December 22, 1987. But because §668.7(a)(5) (which makes a student's eligibility to receive Title IV funds contingent upon the existence and application of a reasonable SAP policy) was not implemented until December 1987, ED declined to assess any liability against DuQuoin for that earlier period not covered by any SAP policy.

DuQuoin argues that the original OIG auditors received three SAP policies covering the three successive audit periods, and then improperly combined all three to create a new ad hoc hybrid SAP policy against which to measure the College. (Initial Brief, at 1, 3; Reply Brief, at 1.) SFAP replies that:

Contrary to DuQuoin's claim, the liability assessed by the Department in the January 4, 1995 FAD is not based on any OIG "rewrite" of DuQuoin's three SAP policies. ... Because DuQuoin failed to conduct its file review in accordance with the Department's instructions and declined to conduct a proper file review, ED was forced to calculate a liability against the institution based on the information that was available to the Department at

the time. In calculating the liability, ED relied on data provided by DuQuoin regarding the number of hours completed by each student at issue at the time of the second Pell disbursement. (SFAP Brief, at 13.)

SFAP assessed its liabilities based upon the requirement in SAP Policy No.1 that students earn a minimum of 125 clock hours per month in order to maintain SAP, and 39 students were identified as not having met that requirement and therefore should not have received Title IV funds. All Title IV funds disbursed to students after they were no longer maintaining SAP were determined to be institutional liabilities. Accordingly, the January 4, 1995 FAD assessed a \$79,003 liability against DuQuoin. [See footnote 6 6](#)

DuQuoin has the burden of proving that it complied with program requirements and that the Federal fund and Federal loan expenditures it made were proper. (34 C.F.R. §668.116(d), July 1, 1994.) SFAP has established, by a conservative interpretation of DuQuoin's own SAP policies, that DuQuoin disbursed Title IV funds to students who were not maintaining satisfactory academic progress during the audit period.

However, there is one aspect of this case that is disturbing. It is clear from a review of both DuQuoin SAP policies and enrollment contracts, that DuQuoin intends 12 months to be the recommended regular period within which students are expected to complete their course work, and that 18 months is a "maximum time frame" within which students who fall behind may still complete their course work. I fail to see by what authority SFAP seeks to compel DuQuoin to change its "maximum time frame" to just 12 months. No interpretation or re-interpretation of the school's underlying documents, and no offer to "allow the school to revise its SAP," results in giving SFAP authority or jurisdiction to mandate that DuQuoin reduce its "maximum time frame" to the 12 months that SFAP apparently prefers. And to contrive to say that students who take the longer period to complete their course work "are treated differently" (i.e., they have to pay the school more money to continue receiving its services for an additional six months), and that this somehow is illegal under the law or regulations, is to distort the impact and intent of the law and regulations. On this point SFAP oversteps its bounds and exceeds its authority. [See footnote 7 7](#) (Even four- year universities charge students more money for the additional semester(s) if they require more time to graduate.) The SFAP's own publication (quoted in its Brief, at 9) makes it clear that

there can be a difference between the time a course normally takes to complete and a maximum time frame:

...(I)f a school offers a 900 clock hour program that normally takes 8 months to complete, it could set a maximum time frame of 10 months for completion of the program. Thus, a student would have to complete the first 450 hours of the program within five months to be making satisfactory progress.
(*'87-'88 Student Financial Aid Handbook*, at 11, ED Ex.10, emphasis added.)

SFAP also argued that after it suggested to DuQuoin that it revise its SAP Policy No.1 to bring it within the regulations, that instead of doing so in accordance with SFAP's "suggestions", DuQuoin instead "conducted a wholesale revision of the policy, dramatically changing several core requirements," including requiring students to earn only 83.5 clock hours per month, instead of the earlier 125 hours per month, and requiring a theory grade point average of only 70% instead of the earlier 80%. But the new 83.5 hour requirement was mathematically tied to the 18-month "maximum time frame" that the school had all along [See footnote 8 8](#), while the 125 hours per month was predicated upon only the "regular" 12-month course period [See footnote 9 9](#), which the school had never intended to be its "maximum time frame." The lower clock-hour number is not prohibited by anything in the regulations, just as the 18 month maximum time frame was never prohibited by anything in the regulations. Likewise, there is no regulatory requirement that the school continue to maintain an 80% theory grade point average, an average higher than typically required in the industry. There is simply no evidence from SFAP that an 80% average is standard in the industry, and thus must be retained forever under penalty of losing Federal funds. Nor does ED have the authority to dictate that a school maintain or change to a 12-month "maximum time frame."

However, SFAP also points out another ground why SAP Policy No.1, as it existed during the audit period, is considered to be unreasonable and therefore invalid. Because SAP Policy No.1, under certain circumstances, would have allowed a student to maintain SAP throughout his or her program and still not be able to graduate within the maximum time frame of 18 months [See footnote 10 10](#), it was not "reasonable" within the meaning of §668.16(e)(3)(ii). The purpose of requiring an institution to establish a maximum time frame within which a program must be completed is to ensure that students are making satisfactory progress toward achieving their educational goals. Id. (See SFA Handbook, at 9, and In Re Selan's System of Beauty Culture, Docket No. 93-82-

SP, U.S. Dept. of Education, December 19, 1994.)

FINDINGS AND CONCLUSIONS

After due consideration of all the evidence, including the briefs of the parties and all exhibits, I find and conclude that Finding 1 of the FAD should be AFFIRMED, except for the portion directing the Respondent institution to change its "maximum time frame" from 18 months to 12 months or implying that such change is necessary to bring its SAP Policy into compliance with the regulations. The regulations (34 C.F.R. §668.16(e)(3)(ii)(A)) permit the institution to set its own maximum time frame, so long as it is reasonable, made known to enrolling students, and applied fairly to all students. It is the institution in the first instance, not the Department of Education, that creates and enforces its own Student Academic Progress policy, although the Secretary thereafter has the authority to review and monitor it for compliance with the "reasonableness" requirement of the regulations. Under the circumstances of this proceeding, in view of the courses offered by this institution and the clock-hours needed to graduate, I find that an 18-month "maximum time frame" is not "unreasonable" and need not be changed in order to comply with pertinent ED regulations.

However, in the audit here in issue, auditors found that 39 students were disbursed Federal funds when they were not in compliance with the College's own published SAP Policy No.1. Accordingly, the total assessed institutional liability of \$ **79,003** is hereby **AFFIRMED**, and the Respondent is ordered to reimburse the U.S. Department of Education and the current holders of the GSL notes with their respective amounts as set forth in the note below.[See footnote 11 //](#)

IT IS SO ORDERED.

Thomas W. Reilly
Administrative Law Judge

Issued: January 11, 1996.
Washington, D.C.

S E R V I C E L I S T

A copy of the attached **DECISION** was mailed by **CERTIFIED MAIL** on this 11th day of January, 1996, to the following parties:

Howard Dean Allen, President DuQuoin/Trend Beauty College #8 Eastgate Plaza East Alton, IL. 62024.	Cathy L. Grimes-Miller, Esq. Office of the General Counsel U.S. Department of Education Rm. 5436 -- FB-10B 600 Independence Avenue, S.W. Washington, D.C. 20202-2110.
Natalie White Johnson, MBA, CPA 800 S. Wells, Suite 524 Chicago, IL. 60607.	

[Footnote: 1](#) 1 The audit covered award years 1987-88, 1988-89, and 1989-90. The original purpose of the audit was to review the period July 1, 1988 - June 30, 1989, but during the course of the audit it was discovered that there appeared to be systemic violations that occurred outside the targeted period. At that point, the audit period was expanded. (SFAP Brief, at 3.)

[Footnote: 2](#) 2 See FAR, ED Ex.2, at 4.

[Footnote: 3](#) 3 On December 20, 1994, ED issued an FAD concerning Finding 1 of the October 4, 1991 FAR. That FAD was returned to ED marked "Refused" by the Postal Service. However, on January 4, 1995, ED issued a second FAD concerning Finding 1 and DuQuoin accepted delivery. In a letter dated February 7, 1995, DuQuoin timely appealed that FAD (and thus Finding 1), pursuant to 34 C.F.R. Part 668, Subpart H.

[Footnote: 4](#) 4 ED issued final determinations for Findings 2 and 3 of the FAR in an FAD dated June 21, 1993 (ED Ex.3). DuQuoin did not request an appeal of that FAD until December 31, 1993, long after the 45-day statutory appeal period had expired. Accordingly, only Finding 1 remains as a valid subject for appeal review. (See ED Ex. 4, DuQuoin's letter of December 31, 1993; and DuQuoin's Initial Brief, at 2, para.10.)

[Footnote: 5](#) 5 Three briefs have been filed in this proceeding. DuQuoin's Brief, dated May 5, 1995, has eleven exhibits attached (Resp. Ex. A -- Resp. Ex. K). SFAP's Brief, dated June 8, 1995, has twelve exhibits attached (ED Ex.1--ED Ex.12). DuQuoin also filed a Reply Brief, dated June 27, 1995, with an "Exhibit 1" attached, and that additional exhibit has its own attachment ("Trend Beauty College Enrollment Contract").

[Footnote: 6](#) 6 This liability is comprised of \$49,186 in Guaranteed Student Loans (GSL), \$11,350 in Pell funds, and \$18,467 in interest and special allowances. (ED Ex.12, DuQuoin Initial Brief, at 2, para.7.) (The GSL program is now referred to as the Federal Family Education Loan program.)

[Footnote: 7](#) 7 So there is no question regarding this item of discussion, I find the following comment in SFAP's Brief to be legally unjustified: "Bringing SAP Policy No.1 into compliance required DuQuoin to establish 12 months as the maximum time frame...."

[Footnote: 8](#) 8 Respondent points out that: "Our policy clearly stated that 'a distinction is made between those marginally below attendance and/or academic requirements and those who are so far below that they could never complete their educational goals within the maximum time frame of 18 months.' " (Reply Brief, at 4.)

[Footnote: 9](#) 9 DuQuoin's Reply Brief, at 4, Point 8.

[Footnote: 10](#) 10 The example cited by SFAP is that a student could conceivably earn 125 clock hours as little as every fourth month and earn an average of 70 hours in the intervening month and still not be in a position to graduate. SAP Policy No.1 required a student to fail to achieve the minimum requirement for four consecutive months before the student's Title IV financial assistance would be forfeited. SFAP's Brief, at 11, note 10. (DuQuoin's later change in its clock-hour requirement from 125 hours per month to 83.5 in its later-revised SAP Policy, so as to mathematically fit the 18 months maximum time frame, is acceptable prospectively, but cannot be used to cure past student failures to comply with the then- published minimum monthly SAP requirements in effect for the audit period.)

[Footnote: 11](#) 11 This total is comprised of \$11,350 to be repaid to the U.S. Department of Education, plus all applicable interest and special allowances (\$18,467 as of the time of the filing of the SFAP Brief), and \$49,186 to be repaid to the current holders of GSL notes.