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

In the Matter of **Docket No. 95-52-SP**

ARKANSAS VALLEY TECHNICAL INSTITUTE, Student Financial Assistance Proceeding
Respondent. PRCN: 94406054

Appearances: Leigh Anne Yeargan, Esq., Assistant Attorney General, Little Rock, AR, for Arkansas Valley Technical Institute.

S. Dawn Robinson, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Richard F. O'Hair

DECISION

Arkansas Valley Technical Institute (AVTI) 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 January 17, 1995 , SFAP issued a Final Program Review Determination (FPRD) in which it sought the return of $24,445 in federal funds. The FPRD is based upon the program review report for the 1991-92 and 1992-93 award years. AVTI filed a request for review on March 2, 1995 . Both parties filed submissions to this tribunal in response to the Order Governing Proceedings.

SFAP contends that AVTI incorrectly included tuition and fees in calculating its cost of attendance (COA) for federal Pell Grant awards for students even though such tuition and fees were being paid directly by a Job Training Partnership Act (JTPA) agency. SFAP further alleges that the institution expended Federal Supplemental Educational Opportunity Grant (FSEOG) funds in excess of its allocation level.

AVTI responds that, as provided in the Federal Student Financial Aid Handbook, it properly included the cost of tuition and fees in its COA for the JTPA students at issue because, even though the JTPA agency reimbursed the institution for these charges, the students remained liable if the JTPA agency did not fully reimburse the institution. In the alternative, the institution

argues that if I find it to be in violation of the interpretative guidelines contained in the Handbook, I should hold that these guidelines are void because they are vague and unconstitutional.

I

Under the former 20 U.S.C. § 1070a-6(5), the COA consisted of "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 allowances for other expenses such as room and board costs and child care. 20 U.S.C. § 1070a-6(5)(A) (emphasis added). Citing *Black's Law Dictionary* and several decisions of this tribunal, SFAP argues that this statute clearly allows tuition and fees to be included in the COA only if they are actually charged to the student, such that the student has a legal obligation, duty, or burden to pay the alleged charge.

The cases cited by ED, however, are distinguishable from the present case. In both *In re Education Management Systems, Inc. d/b/a Chenier,* Dkt. No. 94-31-SA, U.S. Dep't of Educ. (June 22, 1994) and *In re Microcomputer Technology Institute,* Dkt. No. 94-88-SP, U.S. Dep't of Educ. (May 5, 1995), the institutions involved had provided educational services to incarcerated students. The decisions held that an institution may not include tuition and fee charges as elements of the institution's cost of attendance where the 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. In *In re Massachusetts School of Barbering and Men's Hairstyling,* Dkt. No. 94-128-SP, U.S. Dep't of Educ. (May 12, 1995), a case that involved incarcerated students whose tuition and fees were waived if they could not obtain Pell Grant funding, the institution did not dispute SFAP's claim that the institution never actually charged tuition and fees to its students. There, the institution argued that 20 U.S.C. § 1070a- 6(5)(A) permitted the institution to include the tuition and fees that normally would have been charged to such students, an argument that had been rejected in the prior two decisions. The judge again rejected this argument, holding that tuition and fees can be included in the institution's COA only if these are actually charged to the student.

A slightly different scenario is found in *In re Mount Wachusett Community College,* Dkt. No. 94-102-SP, U.S. Dep't of Educ. (September 1, 1995). This case also involved the computation of the COA for incarcerated students. Unlike the institutions in the two previous cases, however, Mount Wachusett was able to show that its students were charged for the tuition and fees. SFAP attacked this practice by alleging that the students were never billed for any tuition and fee costs in excess of the students' federal Pell Grant awards. Mount Wachusett successfully defended its practice because it was able to show that the students were potentially liable for any unpaid balances at the end of the year, even though the institution had established a practice whereby it routinely waived any charges to the student that remained after federal student financial assistance funds were credited to the students' accounts.

None of these decisions, however, stand for the proposition that an institution cannot include in its COA tuition and fee charges that are actually charged against the student but for which the institution is reimbursed from another source. In fact, a recent decision of this tribunal specifically upheld the right of an institution to include in its COA tuition and fees for which the institution is reimbursed by a JTPA agency. In *In re Hallmark Institute of Technology,* Dkt. No. 94-127-SP, U.S. Dep't of Educ. (August 23, 1995), the institution contracted with a JTPA agency providing that the JTPA agency would reimburse the institution for all or part of the cost of training each student. The JTPA students signed a student enrollment agreement and became contractually obligated to pay for tuition and fees incurred. The judge also discussed an internal ED memorandum that authorized institutions to include tuition and fees charges in their COA for JTPA recipients when the charge is made directly to the student and is paid by either the student or student financial assistance (such as the JTPA program). The memorandum also stated as follows:

If an institution charges the student for tuition and fees, it must expect the student to pay the charge if the JTPA agency or other source of assistance does not pay. The existence of the tuition and fee charge must be documented in the same way as for any non-JTPA student (i.e. in the school's contract with the student or in the agreement with the JTPA agency).

This language is an accurate description of the law in this area as delineated by recent decisions of this tribunal. The Department's 1991-92 Student Financial Aid Handbook, contained at ED Ex. 10-1, summarizes the law as follows:

A school may include a tuition and fee charge in the cost of attendance for a Pell Grant recipient only if that charge is actually made to the student and is paid either by the student or by some type of student financial assistance (such as JTPA). The existence of such a tuition and fee charge must be documented in the same way as for any non-JTPA student--for instance, in the school's contract with the student, or in the agreement with the JTPA agency. (If the school charges the student for tuition and fees, the school would have to expect the student to pay the charge if the JTPA agency or other source of assistance does not pay on behalf of

the student).

On the other hand, if the school does not actually charge the student for tuition and fees (either because it is prohibited from doing so under the JTPA contract, or for any other reason), then no tuition and fee component would exist for the Pell Grant cost of attendance.

The facts of the instant case are analogous to those in *Hallmark* and as discussed in the Student Financial Aid Handbook. AVTI charged students tuition at the beginning of each semester and entered these amounts on the Accounts Receivable Ledger. Ex. R-14 through R-36. The exhibits submitted by AVTI demonstrate that the students at issue in this proceeding were charged tuition at the beginning of each semester. Ex. R-14, R-16, R-18, R-20, R-21, R-22, R-23, R-24, R-28, R-29, R-30, R-31, R-32.

Students who received JTPA funds (which were listed on the ledgers as "WAEDA" funds) had those funds credited to their accounts at the time that they were received. The ledgers maintained

a balance for each student showing any credit owed to the student or debit owed to the institution. Ex. R-37 contains the "Procedures Related to Tuition Ledger and Tuition Refunds," which explain the usage of the Account Receivable Ledgers and the procedures under which students may obtain credit refunds or the institution may collect debit balances owed to it by students.

At the end of the fiscal year, in compliance with these procedures, the institution compiled a Control Sheet from the Accounts Receivable Ledger that listed all students with unpaid tuition and fees. Ex. R-38 through R-47. After having their accounts credited with JTPA funds, students #3, #5, and #10 still owed AVTI the amounts listed on the Control Sheet. Ex. R- 39, R-41, and R-42. Payments to the institution from various sources were specified, and remaining debit balances became a debt owed by the student to the institution. Ex. R-48 through R-53.

Although SFAP challenges the credibility of the evidence submitted by AVTI, I find the institution's documentary evidence to be persuasive. These exhibits amply demonstrate that AVTI actually charged tuition to JTPA students and that they remained liable if the JTPA agency did not reimburse the institution. Moreover, the tuition charges for JTPA students were documented in the same way as tuition charges for non-JTPA students were documented. Student #8, who was not a JTPA student, was charged tuition on the Accounts Receivable Ledger in the same manner as the JTPA students. Ex. R-21. Student #8 was also included on the Control Ledger in the same manner as the JTPA students were. Ex. R-42. Since his debit balance was not paid by the end of the fiscal year, it became a debt owed by him to the institution. Ex. R-51.

SFAP concedes that the JTPA contracts did not explicitly prevent AVTI from charging tuition and fees to the students, yet inexplicably claims that "the contracts, in effect, precluded

AVTI from charging those JTPA trainees tuition and fees." SFAP Br. at 8-9. The evidence discussed above demonstrates that the institution did in fact charge tuition and fees to its students. SFAP also claims that a ruling in favor of the institution would allow it to engage in "double-dipping," an argument that was rejected in *Hallmark* and that I reject here for similar reasons. *See Hallmark* at 9, n.5.

Therefore, I find that AVTI properly included the cost of tuition and fees in its COA for the JTPA students at issue because the JTPA agency simply reimbursed the institution for these charges and the students remained liable if the JTPA agency did not reimburse the institution. Because I find that the institution complied with ED's interpretative guidelines and their actions are in accord with prior precedents of this tribunal, it is not necessary to address the institution's alternative argument that the interpretative guidelines contained in the Handbook are vague and unconstitutional. Accordingly, AVTI has no liability under Finding 3.

II

Finding 11 of the FPRD charged AVTI with exceeding its FSEOG allocation by $800 for the 1991-92 award year and requests a repayment in that amount. Although AVTI appealed Finding 11 in its request for review, it did not discuss this finding in its brief. I find that AVTI has not

satisfied its burden of persuasion under 34 C.F.R. § 668.116(d) to demonstrate that it did not over expend its FSEOG expenditures. Accordingly, AVTI is liable for $800 under Finding 11.

FINDINGS

1. AVTI properly included the cost of tuition and fees in the COA that it charged the JTPA students at issue because the JTPA agency simply reimbursed the institution for these charges and the students remained liable if the JTPA agency did not so reimburse the institution.

2. AVTI did not satisfy its burden of persuasion under 34 C.F.R. § 668.116(d) to show that it did not exceed its FSEOG allocation by $800.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Arkansas Valley Technical Institute shall repay $800 to the United States Department of Education in the manner authorized by law.

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Judge Richard F. O'Hair

Dated: January 31, 1996

SERVICE

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

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