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

In the Matter of **Docket No. 95-92-SP**

PARKS COLLEGE, Student Financial Assistance Proceeding
Respondent.

Appearances: Mr. Glen Bogart, Higher Education Compliance Consulting, Birmingham, Alabama, for Respondent.

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

Before: Frank K. Krueger, Jr., Administrative Judge.

DECISION

The Respondent, Parks College, is a proprietary junior college accredited by the Association of Independent Colleges and Schools. Parks College offers a number of associate degree and certificate programs in business, accounting, court reporting, heating and air- conditioning, drafting and cosmetology. The College's main campus is in Albuquerque, New Mexico, with branches in Tucson, Arizona and Denver, Colorado. The College's admission's policy states that it admits students with a high school diploma or a GED certificate; other promising applicants may be admitted based upon a placement test, a second interview, and additional counseling. The College is authorized to participate in all Federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended.

On April 24, 1995, the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), issued a Final Program Review Determination for the period of July 1, 1991, through June 30, 1993. In Finding 1, SFAP found that Parks College was operating an unauthorized program in violation of 34 C.F.R. § 668.7 (1991), in which it enrolled students without high school diplomas or the equivalent in order for those students to qualify for acceptance into the armed services. SFAP assessed liability for $499,043 in unauthorized Pell Grants, Supplemental Educational Opportunity Grants (SEOG), Perkins Loans, and Federal Family Education Loans (FFEL). Parks College contests this finding, arguing that the alleged program at issue was a part of its fully-accredited Associate of Science in Business

Administration program. In Finding 2, SFAP found that Parks College failed to adequately document the independent status of students receiving Title IV assistance, for an assessed liability of $41,523 in Pell and SEOG grants and Perkins Loans, and $36,802 in FFELs. In

Finding 3, SFAP assessed a liability of $9,754 in Pell and SEOG funds and Perkins Loans, and $56,043 for FFELs, for improper calculation of student refunds. Parks College does not dispute the factual allegations made by SFAP concerning Findings 2 and 3, but does assert that it should be allowed to use the actual loss formula, rather than buying out the student loans at issue from their present holders. In Finding 12, SFAP assessed liability for $12,795 for disbursement of Pell Grants to three students before they completed the required number of hours in a payment period. Parks does not contest this finding, but asserts that $9,754.09 of the assessed amount is included in the Pell Grant liabilities assessed in Finding 3. In Finding 13, SFAP found that Parks College certified one student as eligible when she exceeded the amount of time allowed by the college's satisfactory academic policy for completion of her program for a liability of $758 in Pell Grant money and $6,640 in FFELs. Parks disputes this finding, contending that SFAP did not take into account that the student in question had been part-time for a number of semesters.

As discussed below, I find in favor of Parks College on Findings 1 and 13. In addition, I find that there is no duplication of Findings 3 and 12, and that Parks College may use the actual loss formula to satisfy its liability under Finding 2. Since Finding 3 deals with money to be credited to loan accounts to correct improper calculation of refunds, the application of the actual loss formula does not apply.

DISCUSSION

I. Finding Number 1: The "6-BA Program."

During the period covered by the Final Program Review Determination, July 1, 1991, through June 30, 1993, Parks College admitted 265 students into its accredited Associate of Science in Business Administration program, with the express understanding that those students were seeking to earn only enough college credit for acceptance into the armed services without a high school diploma or the equivalent. The armed services recognized 24 quarter hours of college credit as the equivalent of a high school diploma. These students were known as "6-BA" students, short for six business administration courses, 24 quarter hours of college credit, all of which could be applied toward the A.S. program in business administration. These students signed enrollment agreements which obligated them to pay for six courses only, and not for a complete academic year as was customary for other students. In the Final Program Review Determination, SFAP cited Respondent for violation of 34 C.F.R. § 668.7 (1991), determining that the college was awarding Federal student financial assistance to students who were not enrolled in an eligible program.

SFAP contends that the 6-BA program was a separate program which was not approved by Park College's accreditation agency or authorized to participate in the Federal student aid

programs. SFAP contends that the fact that "6-BA" students signed enrollment agreements for the 24 credits in the business administration program only, and that the student records for these students often contained the notation "6-BA," is evidence that the program was separate and should have received separate accreditation and approval. Parks College, on the other hand, argues that these students were enrolled in the regular Associate of Science in Business Administration program.

I find Respondent's argument persuasive. The students enrolled in the "6-BA program" were taking regular courses in the A.S. Business Administration program. Although the stated intent of the students in matriculating at the college was to earn six college credits in order to qualify for entrance into the military, they were under no obligation to take only six credits and could go on to earn an A.S. degree in the Business Administration. The students could also enter the military as planned, and apply the six college credits toward earning the A.S. degree after discharge from the military, or apply the six credits at any other college or university, just like any other student in the Business Administration program. The fact that the "6-BA" students signed enrollment agreements which committed them to paying for only six courses is inconsequential. The fact that some of the students had their files noted as "6-BA" is likewise inconsequential. Both are simply notations of the students' intent to take only six courses in Business Administration, a fully accredited and approved program. On the basis of the record, one cannot conclude that there was any apparent difference between the "6-BA" students and any other student enrolled at Parks College, or any difference between the courses they were taking and the courses taken by other students in the Business Administration program.

In its brief SFAP contended for the first time that the 6-BA students were not eligible to participate in the Federal student assistance programs because "most (if not all) of them were not high school graduates." *See* SFAP Brief, p.4. This contention must, of course, be rejected since there are other ways in which a student may qualify for Federal financial assistance -- the student may have a GED, or the student may be admitted on the basis of an ability-to-benefit test.See footnote 1 *1* There are several student catalogs in the record, and they indicate that Parks admitted any student into its program that had a high school diploma or a GED. The catalogs further state that other "promising students" are admitted after passing an admission test and undergoing an additional interview and counseling. Such an admittance test would, presumably, meet the requirement that

a student not having a high school diploma or the equivalent be given an ability-to-benefit test. However, the record is silent on whether the "6-BA" students were being given an admission test, and whether such test was approved by ED. Although the Respondent has the burden of proof in an audit appeal proceeding, *see* 34 C.F.R. § 668.116 (d) (1994), this issue has never been raised by SFAP. Thus, the absence of evidence on this issue cannot be construed to Respondent's detriment.

II. Finding Number 13: Alleged Award of Title IV Aid to Student Not in Compliance with College's Satisfactory Academic Progress Policy.

SFAP found that Parks College had certified a student as eligible for the FFEL and Pell programs when the student had taken longer than the one and one-half times the program length to complete her program allowed by the college's satisfactory academic progress policy. Parks counters that the student in question was not in violation of its satisfactory academic progress policy as the student was enrolled on a part-time basis for several semesters. Parks introduced into the record the transcript for this student in support of its position. The evidence does appear to demonstrate that the student was part-time for several semesters, and completed her program of study within the required period. SFAP contends that, '[a]t a minimum, Parks has not contested the liabilities assessed for money provided to the student when she was attending less

than half-time." SFAP Brief, p. 14, footnote 16. However, SFAP does not demonstrate how the liabilities for Finding 13 were assessed, or even that the student at issue received Federal assistance when she was part-time or whether that was in violation of the regulations. Thus, I have concluded that Parks College has no liability under this finding.

III. Duplication of Finding Number 3 with Finding 12.

In Finding Number 3, SFAP found that Parks had improperly calculated refunds due to some of its students participating in the Title IV programs, and determined that Parks owed ED $9,754.09 in Pell Grant funds and owed holders of FFELs $56,043 for credit to accounts of student borrowers. In Finding 12, SFAP found that Parks made a number of improper disbursements under the Pell Grant program, and was responsible for reimbursing ED $12,795. While not contesting the validity of these individual findings, Parks cryptically argues that the amounts of liabilities for the Pell Grant funds under these two findings duplicate each other. Parks appears to be arguing that the liabilities are the same because some of the same students are covered by each finding. Finding 3 deals with twelve students not given appropriate refunds, while Finding 12 deals with three students who were improperly disbursed funds before they had completed the required number of hours during a payment period. Only one student involved in Finding 3 was also involved in Finding 12. If there is some duplication between the two findings, it is impossible to tell on the basis of the present record, and Parks College has failed to carry its burden of proof on this item. *See* 34 C.F.R. § 668.116(d) (1994).

IV. Findings 2 and 3: Application of Actual Loss Formula.

In the Final Program Review Determination, SFAP stipulated that Parks College satisfy its liability for unauthorized FFEL loans by purchasing those loans from their current holders. Parks contends that it should be allowed to reimburse ED for any actual loss to the Department using the actual loss formula to estimate the losses to the Department due to defaults on the unauthorized loans. In its brief, SFAP states that it has no objection to using the actual loss formula for Finding 2, but states that the formula should not be used with respect to Finding 3, since that finding deals with refunds to students, not reimbursement to ED.

I agree that it is appropriate to use the actual loss formula to determine the monetary amount of liability owed ED for the unauthorized FFELs under Finding 2. The regulations do not specify how specific liability for unauthorized FFELs should be calculated. The only loss to ED for such loans is interest subsidies and special allowances paid by ED for those loans, and any sums provided by ED to cover repayment defaults on those loans. Since defaulting students will not be identified for several years, a reasonable method to estimate the actual loss to ED is to multiply a default rate for loans made in a prior year by the total amount of the unauthorized loans covered by Finding 2.

SFAP contends that the 1992 cohort default rate should be used when calculating the actual loss formula. Parks College contends that, since the 1992 rate is under appeal, it would be more appropriate to use the estimated 1993 rate. SFAP argues that the estimated 1993 rate should not be used as it is not a final rate. Respondent appears to want its cake and eat it too. It argues that the 1992 rate is not final because it is on appeal, and yet also argues the estimated 1993 rate should be used, although that rate is not yet final. Since Parks has not put into the record what

the estimated 1993 rate is, and since the 1992 rate appears to be as reasonable as the 1993 rate since neither rate deals with the actual loans included in this case, I have adopted the 1992 rate.See footnote 2 *2*

Respondent's liability for Findings 2 and 3 is as follows:

Finding 2: $41,573 -- Owed ED for unauthorized Pell Grants, SEOGs, and Perkins Loans.
36,802 -- Owed ED for estimated defaulted loans.

Finding 3: $9,754 -- Owed ED as refunds for Pell Grants, SEOGs, and Perkins Loans.
56,042 -- Owed to students or lenders of FFELs for refunds improperly calculated.

FINDINGS AND CONCLUSIONS

1. From July 1, 1991, through June 30, 1993, Parks College admitted students into its Associate of Science in Business Administration program for the limited purpose of seeking 24 hours in college credit in order to qualify for the armed services, which accepted such credits in lieu of a high school diploma. The courses taken by these students were the same as those taken by any other student in the Business Administration program. The credits earned by these students could be used for acceptance into the military service as well as applied toward a college degree either at Parks College or any other college or university.

2. SFAP's Finding 1 is not supported by the law and evidence. Parks College was in full compliance with all applicable regulations, including 34 C.F.R. §§ 668.7 and 668.8 (1991, 1992), and thus it has no liability to ED concerning the admittance of students into its Business Administration program for the limited purpose of securing the requisite number of college credits to qualify for acceptance into the military service.

3. The student covered by SFAP's Finding 13 was in full compliance with the satisfactory academic policy of Parks College; thus, Parks has no liability under this finding.

4. SFAP's Findings 2, 3 and 12 are upheld, as Parks College admits liability. With respect to Finding 2, it is appropriate to estimate the monetary liability due ED by using the 1992 cohort default rate, the only final rate contained in the record of this case. As a result of these violations, Parks College must reimburse ED $55,277 for unauthorized Pell and SEOG grants and Perkins Loans covered by Findings 2, 3, and 12, and pay ED $15,345 for estimated losses to ED to cover defaulted payments for unauthorized FFEL loans covered by Finding 2. Parks must also pay $56,042 to students and lenders of FFEL loans to cover refunds which were not given to the students covered by SFAP Finding 3.

ORDER

ORDERED, that Respondent pay $70,622 directly to ED to cover SFAP Findings 2, 3, and 12; and that Respondent pay $56,042 to students or lenders of FFEL loans to cover refunds which were not given to those students covered by SFAP Finding 3.

November 7, 1995 Frank K. Krueger, Jr.
Administrative Judge

S E R V I C E

A copy of the attached Initial Decision has been sent by **REGISTERED MAIL, RETURN RECEIPT REQUESTED,** to the following:

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Footnote: 1 *1 Prior to 1991, a student could be admitted on the basis of ability to benefit by taking a nationally recognized, standardized, or industry developed test or enrolling in and successfully completing a remedial or developmental program. As of 1991, all students admitted on the basis of ability to benefit must take an independently administered ability-to-benefit test recognized by ED, or be determined to have the ability to benefit in accordance with a state-prescribed process approved by the Secretary. See 20 U.S.C. § 1091(d) (1995). The earlier standard is codified at 34 C.F.R. §§ 600.5 and 668.7(b)(1991). The regulations have never been modified to reflect this statutory change.*

Footnote: 2 *2 Again, neither party states what the 1992 rate is, although one is able to determine that it is 41.7 percent from the mathematical calculation in the SFAP Brief at page 15. Since Parks College never challenged this calculation in its Reply Brief, I have accepted it as accurate.*
