

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

In the Matter of

Butte Academy of Beauty Culture

Respondent.

Docket No. 96-136-SP

Student Financial

Assistance Proceeding

PRCN: 1996-2-08-12238

Appearances: Frank Burgess, Esq., Burgess, Joyce, Starin & Whelan, Butte, Montana, for Butte Academy of Beauty Culture.

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

Before: Judge Ernest C. Canellos

DECISION

On September 4, 1996, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a final program review determination (FPRD) finding that Butte Academy of Beauty Culture (Butte) violated various program requirements governed by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. ' 1070 *et seq.* and 42 U.S.C. ' 2751 *et seq.* In this proceeding, Butte challenges SFAP's determination only with regard to finding 6. Under finding 6, SFAP determined that during the 1994-95 award year Butte improperly disbursed to its students \$5,055 in Federal student financial assistance funds by inflating the number of weeks of instruction for the institution's cosmetology program. According to SFAP, Butte improperly disbursed Pell Grant funds to its students by calculating the institution's program course length as consisting of 30-weeks rather than the actual program length of 25-weeks.

The material facts of this case are uncontested and clearly established. During the period at issue, Butte offered a 2 year, 2000 clock hour postsecondary education program in cosmetology at the school's location in Butte, Montana. Since the program trained students in skills such as manicuring, shampooing, facials, and various hairstyling techniques, students were required to practice those skills in clinics on actual patrons. According to Butte, the curriculum was designed to include a degree of flexibility in the length of time a student may need to complete the program due to, among other things, the lack of availability of potential patrons in Butte, Montana, where the population in the metropolitan area is below 40,000 residents.

In Butte's course catalog, which it distributes to its students, the catalog states that the maximum time for a student to complete the cosmetology program is 16-months plus any time credited to the student for excused absences or approved leaves of absence. The catalog also states that the full time program has an enrollment period of 12-months and requires a student to complete 2,000 clock hours of course work. Both the catalog and the enrollment agreement, which an enrolled student is required to sign, state that a student may be charged at the end of the 12-month enrollment period a fee of \$1.50 for each hour needed to complete the program's 2,000 clock hours. [See footnote 1](#) Nowhere in the catalog or the enrollment agreement does Butte indicate the number of weeks of instruction offered in each of its 1,000 clock hour

academic years. [See footnote 2](#)

For the purpose of calculating Pell Grant awards, Butte determined that its cosmetology program consists of two 30-week, 1,000 clock hour academic years. In this respect, a student completing the institution's cosmetology program could be entitled to payment of a maximum Pell Grant award for each 1,000 clock hours completed. In SFAP's view, Butte's measurement of its program length for Pell Grant purposes was inconsistent with the program length stated in its catalog and enrollment agreement. SFAP argues that this inconsistency is significant because the measurement of course length used by Butte to award Pell Grants allowed the institution to disburse more Pell Grant funds to its students than the institution was eligible to disburse.

For a financially eligible student to receive a maximum Pell Grant award, an academic year must include at least 900 clock hours over a minimum of 30-weeks of course instruction. [See footnote 3](#) Butte does not meet this requirement, according to SFAP, because according to its catalog and enrollment form, the institution's cosmetology program is a 2,000 clock hour, 12-month program with each academic year consisting of only 25- weeks. SFAP argues that although Butte's stated use of a 30-week, 1000 clock hour academic year appears to comport with the regulations, the fact that this stated use is contradicted by Butte's catalog and student enrollment agreements demonstrates that Butte either did not actually use the regulatory formula in calculating Pell Grant payments or the institution improperly used one measurement of course length for Pell Grant purposes and another for instructional time. In support of its conclusion, SFAP notes that not only did Butte *require* its students to complete the cosmetology program in 12-months, but the school also penalized students who did not complete the program in 12-months by charging the student a \$1.50 per hour penalty fee for every hour not completed within the 12-month period. [See footnote 4](#)

In its defense, Butte does not dispute that its enrollment agreement and program catalog measured the cosmetology program's course length in a manner inconsistent with the way the institution measured course length for Pell Grant purposes. According to Butte, this was done to allow flexibility in how its students could complete the cosmetology program. Butte makes much of the fact that it calculated Pell Grant awards consistent with the 30-week regulatory requirement and assiduously disputes that the actual course length of its cosmetology program is calculated in the manner indicated by SFAP.

Although the parties devote significant effort to disputing whether the institution correctly followed the regulatory formula for calculating a student's Scheduled Federal Pell Grant award as set forth at 34 C.F.R. § 690.63, the issue before me is resolved by the straightforward and crystal clear language of 34 C.F.R. § 690.64(g)(2) and 34 C.F.R. § 668.2. In both regulations, the law could not be more explicit in its requirement that clock hour institutions that receive Pell Grant funds *must* define an academic year for each of its eligible programs in terms of the number of clock hours and weeks of instructional time.

Section 690.64(g)(2) mandates that institutions calculate Pell Grant awards in accordance with the regulatory definition of academic year as it is set forth at 34 C.F.R. § 668.2. Section 668.2 defines an academic year as a period of instructional time that is a *minimum* of 30-weeks during which a full-time student is expected to complete 900 clock hours in an educational program, whose program length is measured in clock hours. These regulations taken together require institutions to measure course length _ be it for instructional time purposes or Pell Grant calculation purposes _ by one consistent standard. [See footnote 5](#)

Although Butte argues that it measured its program in a manner consistent with this requirement, it is clear from the institution's course catalog and the student enrollment agreement that Butte did not offer its students a cosmetology program that consisted of at least 30-weeks of instruction for each academic year. [See footnote 6](#) Instead, Butte offered its students a 2-year program that consisted of 2000 clock hours, but clearly did not consist of more than 52-weeks of instruction. Accordingly, the institution's program did not meet the eligibility requirements of Title IV. In this respect, I find that the institution failed to meet its burden of proving that the Title IV funds expended under the Pell Grant program for the 1994-95 award year were disbursed properly.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Butte Academy of Beauty Culture pay to the United States Department of Education the sum of \$5,055.

Ernest C. Canellos
Chief Judge

Dated: May 23, 1997

Footnote: 1 For clock hours completed after the 12-month enrollment period, students were not charged an additional clock hour fee for hours that were credited to the student for approved leaves of absence or excused absences as part of an extended enrollment fee.

Footnote: 2 At the direction of SFAP, Butte calculated the amount of Pell Grant funds at issue to be \$5,055. This amount is undisputed by the parties.

Footnote: 3 34 C.F.R. § 690.63 (1995).

Footnote: 4 In response to Butte's argument that the institution maintained a degree of flexibility in extending the period of time for completing the program due to the fact that many of the institution's students were either employed while in school or had child care responsibilities that often precluded them from meeting the institution's requirements, SFAP argues that Butte's penalty fee arrangement is unconscionable because it permits the institution to obtain a financial gain after intentionally misrepresenting the nature of the institution's program.

*Footnote: 5 Under the regulations implementing the Pell Grant Program, a participating student may not receive a grant in one payment. For the institution that does not have academic terms, there are two payment periods -- the first is the period in which the student completes the first half of an academic year, as measured in credit or clock hours; the second is the period in which the student completes the second half of an academic year. See, *In re Colorado School of Travel*, Dkt. No. 94-174-SP, U.S. Dep't of Educ. (June 14, 1995).*

Footnote: 6 The institution's argument that it calculated Pell Grant awards on the basis of a 30-week academic year is completely unavailing. I expressly decline the institution's invitation to read the regulations as merely requiring institutions to calculate Pell Grant awards consistent with a 30-week academic year, but also permitting institutions to actually offer students a program of whatever length desired; such a reading of the Department's regulations would give new meaning to the phrase "form over substance."
