

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

**In the Matter of
Umpqua Community College,
Respondent.**

Docket No. 96-159-SP
Student Financial Assistance Proceeding

PRCN: 199620212304

Appearances: Dr. James Kraby, President, Umpqua Community College, Roseburg, Oregon, for Respondent.

Kelly J. Andrews, Esq., Of fice of the General Counsel, United States Department of Education, Washington, DC., for Student Financial Assistance Programs.

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

DECISION

The Respondent, Umpqua Community College (UCC), provides postsecondary education in southwestern Oregon. On October 10, 1996, the Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED), issued a final program review determination finding that, for the period from July 1, 1992, through April 1996, UCC disbursed Federal student financial assistance funds in violation of Title IV of the Higher Education Act of 1965, as amended.

SFAP determined that UCC must repay ED \$101,221. \$98,518 of this claimed liability [See footnote 1](#)¹ relates to SFAP's finding that the Respondent disbursed Title IV funds to students who were admitted with less than the minimum ability-to-benefit (ATB) requirements. By letter dated January 14, 1997, the Respondent appealed \$83,753.25 of the \$98,518 total relating to failure to meet ATB requirements.

According to SFAP, the Respondent did not update its ATB policy to reflect changes in the Higher Education Technical Amendments of 1991 (the "1991 amendments"), and allowed students to receive Title IV funding without a high school diploma or its equivalent, or without passing an independently administered test that has been approved by ED. Based on this determination, SFAP requested that UCC perform a file review of all students who received Title IV assistance and who had completed a remedial program from July 1, 1992, through April 1996. As a result of that review, SFAP determined that there were sixty-four students who received Title IV assistance and did not meet the minimum ATB requirements specified by the 1991 amendments.

The 1991 amendments removed the option available under the Higher Education Act of 1986 that allowed applicants who are unable to satisfy the institution's admissions testing requirements to receive Title IV assistance if they successfully complete an institutionally prescribed program or course of remedial or developmental education. Pursuant to 20 U.S.C. § 1091(d) (1992), a student who does not have a high school diploma or its equivalent may be admitted to an eligible program at an eligible institution and receive Title IV assistance if that student has the "ability to benefit" from the training or education offered. In order to show that the student has an "ability to benefit" from an education program, the student must either take an independently administered examination, approved by the Secretary, and achieve a minimum score, or the student must be determined to have the "ability to benefit" from the education in accordance with such process as the State shall prescribe. [See footnote 2](#)² 20 U.S.C. § 1091 (d)(1)&(2) (1992). Since sixty-four students not possessing a high school diploma or its equivalent had not obtained such a passing score on an independently administered test, they were ineligible to receive Title IV funds. [See footnote 3](#)³

UCC contends that its policy was revised to reflect the 1991 amendments, but that it "did not understand at the time that

students with interruptions in attendance who returned to school more than 12 months after their initial ability to benefit tests were required to be retested." Respondent's brief, p. 7. [See footnote 4](#) UCC notes that, for the period of 1992 through April 1996, the period covered by the SFAP program review, 224 students received Title IV assistance on the basis of ATB requirements, and only sixty-four files (28 percent) did not have evidence of successful test scores. UCC further notes that these sixty-four students did not meet the "12 month attendance requirement, did not meet the minimum cut-scores, or their test scores could not be located in the educational department."

It is not clear to me exactly what UCC means by the "12-month attendance requirement." It appears that an unspecified number of the sixty-four students in question were authorized to receive Title IV assistance before the 1991 amendments took effect, then dropped out of school for over twelve months, were readmitted after the 1991 amendments took effect, and were awarded Title IV assistance after their readmission even though they never received a passing score on an ATB test. In any event, UCC admits that it never fully complied with the 1991 amendments with respect to these students, or that their test scores cannot be located. Nevertheless, UCC argues that the unauthorized Title IV assistance awarded to these students should not be returned to ED because the students at issue went on to successfully complete the program, successfully maintained grade point averages equivalent to a "C" grade, successfully completed remedial work, or met new 1996 minimum test scores. The fact that students ultimately completed the program, maintained satisfactory grades, or completed remedial work does not mitigate the fact that UCC awarded Title IV assistance to students who were ineligible to receive the assistance under standards established by Congress. Also, the fact that some students met the revised 1996 minimum ATB test scores is not relevant. These lower minimum test scores for the ATB test were published by the Secretary in the October 25, 1996. *Federal Register* and were not effective until December 25, 1996. Since UCC was required to comply with the standards in effect at the time of determining eligibility to receive Title IV assistance, the fact that some students met these revised scores does not render them eligible to receive Title IV assistance.

UCC has provided no legally-cognizable reason why it should not repay the unauthorized Title IV funds it awarded to the sixty-four students. Thus, UCC has failed to carry its burden of proof in this proceeding. *See* 34 C.F.R. § 668.116(d) (1996). The reasons provided by UCC essentially amount to a request that I waive the liability because it attempted in good faith to fully comply with the 1991 amendments. Since the requirements at issue are clearly specified in an Act of Congress, I lack the authority to grant a waiver or otherwise excuse the liability. 34 C.F.R. § 668.117(d)(1) (1996).

ORDER

Based on the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Umpqua Community College pay to the United States Department of Education the sum of \$98,518.

Judge Frank K. Krueger, Jr.
Dated: August 7, 1997

SERVICE

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

Dr. James Kraby
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[Footnote: 1](#) ¹ 1 The \$98,518 is comprised of the following: \$90,948 in Federal Pell Grants, \$4,650 in Federal Supplemental Educational Opportunity Grants (FSEOG), \$181 in Administrative Cost Allowances on FSEOGs, \$2,419 in Federal Work-Study funds, and \$320 in Administrative Cost Allowances on Federal Perkins Loans.

[Footnote: 2](#) ² 2 According to SFAP, no state currently has an approved state process that could be used in lieu of testing.

[Footnote: 3](#) ³ 3 The Title IV regulations were not revised to reflect the changes in the law until 1996. Respondent does not claim that it was unaware of the 1991 amendments to Title IV, or that it was misled by ED's failure to promptly amend the regulations.

[Footnote: 4](#) ⁴ 4 SFAP contends that the UCC policy itself violated the 1991 amendments. SFAP brief, p. 5. Although the UCC policy provided that a student who failed to achieve a passing score on WCC's ATB test could enroll in developmental courses, it also provided for additional testing during the developmental courses and that financial aid would not be "awarded until test results are completed." Respondent Exhibit 11, p. 2. Thus, it appears that the policy complied with the 1991 amendments, but the policy, as discussed *infra*, was not fully implemented.
