

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

In the Matter of **Docket No. 96-28-ST**
 Docket No. 96-93-SP
 Docket No. 96-103-SA

INSTITUTO de EDUCACION UNIVERSAL, Student Financial Assistance Proceedings
Respondent. PRCN:199530200074
 ACN: 02-40075

Appearances:

Benny Frankie Cerezo, Esq., San Juan, Puerto Rico, for Instituto de Educacion Universal.

Alexandra Gil-Montero, Esq., and Russell B. Wolff, 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

On March 12, 1996, the office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) issued a notice of intent to terminate the eligibility of Instituto de Educacion Universal (IEU) to participate in the student financial assistance programs authorized under 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.* SFAP also stated its intention to impose a fine of \$275,000. Later in 1996, SFAP commenced two additional proceedings against IEU to recoup \$2,762,150 based on its evaluation of a final program review determination and a final audit determination which described statutory and regulatory violations IEU is alleged to have committed. [See footnote 1¹](#) At the request of the parties, these three interrelated administrative proceedings were combined into one and a hearing to address them was conducted on October 22 and 23, 1996.

TERMINATION

The Secretary of Education is given broad discretion to terminate or limit the eligibility of an institution to participate in any Title IV programs if the institution violates any provision of Title IV or any regulation which implements that statute. The thrust of the Department's efforts to terminate IEU's eligibility to participate in Title IV student financial assistance programs and to impose a fine is that IEU violated three provisions of Title IV and its implementing regulations and thus fails to meet the standards of administrative capability and uphold its fiduciary responsibilities. The specific alleged violations are as follows: 1) IEU requested Title IV program funds in excess of its immediate needs; 2) IEU overstated the number of clock hours of instruction it provided; and, 3) IEU failed to make tuition refunds and

failed to make timely refunds.

Excess Cash

Before an institution may begin participation in Title IV financial aid programs, it must demonstrate that it has the administrative capability to adequately administer these programs. 34 C.F.R. § 668.16. [See footnote 2²](#) Additionally, such an institution must act as a fiduciary when handling Federal funds which are ultimately to be disbursed to the eligible students. 34 C.F.R. § 668.82. With these guidelines in mind, an institution which participates in the Title IV student aid programs is given the discretion to make withdrawals, or draw downs, of Federal funds from the Department account at such times as funds are needed to disburse to eligible students. The institution is not permitted to draw down funds in excess of its immediate need, and immediate need has been defined as those funds which the institution can expect to disburse to students within an average of three days. 31 C.F.R. § 205.4(a) (1988); Recipient's Guide for the Department of Education Payment Management System, Chapter 5, 6 (October 1995). [See footnote 3³](#) If an institution discovers it has funds in excess of this immediate need, it is expected to return them immediately to the Department account. *Id.*

In May 1994 auditors assigned to the Department's Regional Office of Inspector General for Audit (OIG) in New York conducted an audit review of IEU's administration of its Title IV student financial aid programs for the period July 1, 1991, to June 30, 1994. The auditors determined that during the audit period IEU consistently drew down more Federal monies than it could expect to disburse within an average of three days, and monies in excess of its annual authorizations. This finding was based on a review of IEU's funding authorizations for the Pell Grant, Federal Work-Study, Supplementary Educational Opportunity Grant, and Perkins Loans programs, the amounts of the cash draw downs, and the timing and amounts of disbursements for each of these programs. The auditors recorded all of IEU's draw downs and disbursements on a monthly basis for each of the three award years. After subtracting the disbursements from the draw downs, the remaining balance of funds in IEU's accounts represented excess cash held by IEU, or cash held for more than three days.

In the 36 months under evaluation, IEU maintained excess cash balances at the conclusion of every month but October 1991 and March 1993. The highest amount of excess cash balance for any one month was \$4,018,150; over the three year period, the average excess cash balance at the end of the month was \$1,367,783. In addition to monthly totals, the OIG auditors also prepared a chart, ED Exhibit 48, which lists each draw down of federal funds, each disbursement to IEU's operating account, and a running balance of funds in that account. This chart further details the significance of IEU's excess cash position.

In its September 12, 1995, response to the OIG audit report, IEU admitted that it had a problem with maintaining excess cash during the three award years, but argued that the Department had overstated the problem, both in terms of the amount of excess cash at the end of the 1993-94 award year and in the amount of the imputed interest due the Department. Despite this earlier admission, during the hearing, IEU challenged this excess cash finding through the testimony of its witnesses, who made assurances that all federal funds were disbursed within three days of their draw down. IEU's witnesses explained that the reason for this OIG finding was that OIG mistakenly believed that the date student aid was posted on the student ledger was the date the funds were credited to the student accounts. In reality, however, IEU stated that student aid funds were properly credited within three days of their draw down, but this event was posted on a later date. In the absence of a Departmental requirement that these ledgers be updated on a daily basis, it was IEU's practice to post these ledger entries several months after a financial event occurred.

Through this testimony, IEU attempted to demonstrate that the reason it was being mistakenly accused of maintaining excess cash in its school accounts was because of the time delay in posting transactions to the student ledger accounts. However, I am not convinced this is true. ED Exhibit 48 provides a picture of IEU's draw downs and disbursements, with a running account balance. This document clearly demonstrates that it was IEU's practice to draw down more Federal funds than it disbursed within a three day, or even longer period. IEU's testimony regarding the timing of the posting of the student ledger accounts dates is irrelevant, and its testimony that all federal funds were credited within three days of a draw down is unpersuasive. Throughout the three award years examined, IEU maintained excess federal funds in its account for longer than three days.

SFAP also alleged that IEU used Title IV funds for unauthorized purposes. In support of this allegation it presented ED Exhibit 49, an OIG work paper, which indicated that by the end of each month most of the funds in IEU's Federal funds account balance were removed but that the school's operating account balance was not simultaneously increased by the same amounts. SFAP interprets this apparent "disappearance" of Federal funds to be evidence that IEU used these funds for non-program purposes. There is no question that IEU maintained excess cash throughout this period, but I was not provided with sufficient evidence to meet SFAP's burden of proof that the funds were otherwise abused. Therefore, I decline to find that IEU expended Title IV funds for unauthorized purposes.

Overstated Clock Hours

IEU utilizes a clock hour system of measuring the length of its technical programs. For any program measured in clock hours, student eligibility for second and subsequent Pell Grant awards depends upon a student's completion of a prescribed minimum number of clock hours. During the May 1994 audit, the OIG auditors found that IEU was incorrectly computing the number of clock hours assigned to its programs in such a way as to permit students to become eligible for second or subsequent Pell Grant payments sooner than proper.

The issue of how to define a clock hour continues to be a vexing problem for the Department and the subject of much litigation and interpretation. [See footnote 4⁴](#) A clock hour traditionally was defined as a 50-to-60 minute class, recitation, or lecture. Because of ambiguities in the interpretation of this definition, it was further refined in the regulations. The definition applicable to the term "clock hour" beginning with the 1993-94 award year is found in 34 C.F.R. § 600.2 (1994).

Clock hour: A period of time consisting of-

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;

- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period;

An explanation for this change was addressed by the Secretary of Education in the Federal Register of July 23, 1993.

To demonstrate the number of clock hours in an educational program certain institutions have aggregated the number of minutes of instruction provided in that program, and have divided those minutes by 50. This practice is inconsistent with the Secretary's long-standing interpretation under the current definition of the term "clock hour." Under that interpretation, if an institution seeks to determine the number of clock hours in an educational program by aggregating the number of minutes in that program, it has to divide those minutes by 60 rather than 50.

The revised definition of a clock hour requires that each clock hour of instruction takes place in a discrete 60-minute period. The Secretary believes that this revision, as well as this discussion, should eliminate any further contentions regarding the proper calculation of clock hours.

58 Fed. Reg. 36918 (July 23, 1993).

IEU offers two programs, the day program which runs from 8:00 AM to 1:50 PM and a night program which runs from 6:00 PM to 10:30 PM. The day program is 350 minutes in length and consists of six 50 minute periods of instruction for a total of 300 minutes of instruction and one 50-minute student break. [See footnote 5⁵](#) The night program is 270 minutes long and consists of five 50- minute periods of instruction for a total of 250 minutes of instruction and a 20-minute student break. SFAP argues that, in spite of a change to the regulation in 1993 and Secretarial guidance found in the Federal Register, IEU has persisted in its practice of aggregating the number of minutes of instructional time in the program and dividing the number by 50, rather than 60, to compute the number of clock hours. This practice results

in IEU's conclusion that its day program gives the students six clock hours of instruction per day and the night program five clock hours of instruction. SFAP insists that the aggregate hours of instruction be divided by 60, rather than 50, and that IEU's method of computation has resulted in an overstatement of clock hours in its programs and a resultant over award of Pell Grant awards. Using 60 rather than 50 as the divisor results in the day program offering 5 clock hours of instruction and the night program 4.17 clock hours, versus IEU's calculation of 6 and 5, respectively.

SFAP points out that IEU's use of a 50- rather than 60-minute clock hour resulted in an over award of \$3,854,700 in Pell Grants over the three year audit period. However, because of a previous ambiguity of the definition of a clock hour which SFAP attempted to clarify in 1993, SFAP seeks to recover over awarded funds for only the 1993-94 award year.

IEU justifies its method of determining clock hours by explaining that since its day students receive 300 minutes of instruction a day, and the increments of instruction are divided into 50-minute periods, it is only natural to divide the total number of minutes of instruction by 50 to arrive at the proper number of clock hours. It is adamant about not including non- instructional time in the clock hour computation because to do so would result in a higher fee for its students. There is a certain logical appeal to IEU's arguments on this issue; however, this method has its flaws.

The Department's primary goal is to award Pell Grants to students based upon receiving a specified amount of instruction - a clock hour. This instructional clock hour must not consist of anything less than 50 minutes of class, lecture or recitation; the Department will recognize a 50 minute class, accompanied by a 10-minute non-instructional period, to be the equivalent of one clock hour. The regulation confirmed this when it was amended in 1993 specifically sanctioning the inclusion of up to 10 minutes of non-instructional time within one clock hour. However, in many institutions which offer classes which cover a two, three, or four hour block of time in one session, designed with 10-minute breaks for each hour, the instructor and students frequently decide to reallocate the 10 minute break periods. This is accomplished by aggregating them either in the middle, or at the conclusion, of the class session. The obvious benefit to the choice of the latter option is that the class ends early and the non-instructional period is taken after the students and faculty have departed the facility. This, or any other form of realignment of the non-instructional periods does not deprive the students of any instructional time, as the student has had the benefit of several 50 minute periods of instruction and several 10 minute periods of non-instructional time.

SFAP's failure to include the 50 minutes of non-instructional time IEU allows each of its day program students, and the 20 minutes of non-instructional time for the night students, in the computation of the program's clock hours suggests that the Department is interested in preventing a school from providing a continuous stream of 50 minute lectures, without the benefit of a break. Perhaps this is premised on the concern for the value of such non-stop class time. If the non-inclusion of non-instructional time in the clock hour computation is based on this theory, then this appears to be a venture by the Department to exercise direction or control over IEU's curriculum or program of instruction, which is expressly prohibited. 20 U.S.C. § 3403; *see also* 20 U.S.C. §§ 1232-a, 5899. The arrangement of instructional and non-instructional class hours is not a Departmental concern, but one within the province of a state licensing body or accrediting agency.

Another theory which SFAP may be pursuing here is its interpretation that the clock hour definition in Section 600.2 requires the 50- to 60-minute class and any resulting 0- to 10-minute non-instructional time to occur within one consecutive 60 minute period, as opposed to being aggregated as discussed above. If this is SFAP's position, it is based on an ambiguous change to the regulation which leaves the regulation subject to further contention. Although the Secretary indicates a clock hour of instruction should occur in a "discrete 60-minute period", the regulation is not quite so precise. Requiring that the non-instructional time immediately follow a distinct 50-minute period of class ignores the realities of the dynamics of classroom behavior involving classes of two or more consecutive hours in length. [See footnote 6⁶](#)

The problem faced by IEU would have been avoided if it had not aggregated the periods of non-instruction, but rather attached them to the end of each 50-minute segment of lecture. However, I believe it retains this discretion, absent a contrary ruling by its accrediting agency or licensing body. Accordingly, I find that IEU has not overstated its clock hours to the extent advocated by SFAP because it should be permitted to use the combined total of its instructional and non-instructional time to arrive at the clock hour figure. After recomputing the clock hours for the day program, I find IEU provides six clock hours of instruction per day as it claims. This is based on it providing 300 minutes of class, plus

the 50-minute aggregated student break, plus 10 minutes of an imputed break at the conclusion of the school day. This total of 360 minutes is divided by 60, with the result of six clock hours. I find the evening program provides 4.66 clock hours of instruction. This is based upon 250 minutes of class, plus the 20-minute aggregated student break, plus a 10-minute imputed break at the conclusion of the school day. Dividing the total, 280 minutes, by 60 results in a clock hour computation of 4.66 clock hours per day, one-third of a clock hour short of what IEU had allocated for the evening program. Using my recalculation of IEU's clock hours, there has been no over award for the day program, and an over award of one-third of a clock hour per day for the night program. IEU's financial liability for this reduced over award should be recomputed accordingly.

Untimely Refunds

Institutions which participate in any Title IV programs are required to have implemented a fair and equitable refund policy which provides a refund of the unearned portion of the tuition, fees, room and board, and other charges to any student who has received some form of Title IV program assistance and subsequently withdraws, drops out, or is expelled after the first day of the payment period. 34 C.F.R. § 668.22(a). The institution must return the Title IV program portion of the refund to the appropriate program account within 30 days of the date the student withdrew or dropped out. 34 C.F.R. § 668.22(g)(2)(iv) (1994).

From April 18 through 22, 1995, institutional review specialists from the Department's New York Regional Office conducted a program review of IEU's administration of the Title IV program. The program review cited IEU for having a history of making late refunds to students and to the Pell Grant account. The program reviewers discovered that the cause of most of the late refunds was IEU's admission that its usual practice was to wait until the September following each award year to make refund payments; its method for effecting this refund was to offset the refund against future draw downs from the Pell Grant Statement of Account. As a result, IEU's eligibility for funds would be reduced by the amount of the offset. Based on this finding of late refunds, the program reviewers asked IEU to prepare a report of refunds not made, or made late, to the Pell Grant account for each award year under review. In compliance with this request, IEU compiled an initial list of late or unpaid refunds which disclosed 803 late refunds, totaling \$971,914, for the 1992-93 award year; 865 late refunds, totaling \$1,044,454, for the 1993-94 award year; and, as of the time of the review, IEU had failed to make 512 refunds, totaling \$655,554, for the 1994-95 award year. All refunds for the 1992-93 and 1993-94 award years had been paid at the time of the program review.

In response to the SFAP claim that IEU owed the Pell Grant account refunds of \$655,554 for the 1994-95 award year, the school produced testimony and documents proving that on July 20, 1995, it reduced its authorization for Pell Grant funds by generating an offset of \$1,120,192 to its Pell Grant account. IEU argues that this transaction represents a refund, albeit late, of more than double the amount SFAP requested. SFAP disagrees with IEU's conclusion. SFAP confirms that an offset is an appropriate method of paying a refund, but that a reduction of the authorization in a school's Pell Grant statement of account can occur for other reasons as well, such as a reduction in the number of enrolled students. SFAP insists, and I agree, that in this situation a valid refund would have been effectuated only if the reduction of IEU's authorization was accompanied by a showing that IEU enrolled additional students who were eligible for Pell Grants, but for which IEU did not draw down federal funds to award them those grants. IEU presented no evidence of its forbearance of the award of additional Pell Grants to match the offset of its authorizations; therefore, I must conclude that the refund for the award year for 1994- 95 has not been consummated.

Discussion as to Termination

The Secretary has been given the statutory authority to terminate the eligibility for any program under Title IV, of an otherwise eligible institution, if it fails to carry out any regulation prescribed by the Secretary. 20 U.S.C. § 1094(c)(1) (D). Pursuant to this authority, the Secretary has promulgated 34 C.F.R. § 668.86(a), which provides that the Secretary may terminate the eligibility of an institution to participate in any or all Title IV programs if the institution violates any provision of Title IV or any regulation or agreement implementing that Title. In addition, if an institution's regulatory violations result in a breach of its fiduciary duty to administer Title IV programs in accordance with the highest standard of care and diligence, this conduct also constitutes grounds for termination of eligibility to participate in these programs. 34 C.F.R. § 668.82(c).

During the award years under consideration, IEU consistently engaged in conduct which was contrary to the Title IV regulations and regularly ignored policy guidance regarding its obligation to properly estimate the amount of Federal funds needed for a three day period of operation, thus allowing it to maintain excess Federal funds in its school account in violation of regulatory prohibitions designed to prevent this situation. Additionally, IEU failed to make timely refunds, and for the 1994-95 award year failed to make refunds at all, to students and/or the Pell Grant account for students who withdrew, dropped out, or were expelled from the institution. Based upon the credible evidence of these regulatory violations, SFAP has shown to my satisfaction that IEU lacks the administrative capability to administer Title IV programs and that it has also failed to act in a manner consistent with its fiduciary duty. I find IEU's failure of its duties in these two critical areas warrants termination of its eligibility to participate in the Title IV programs.[See footnote 7⁷](#)

ASSESSMENT OF FINES

In conjunction with its efforts to terminate IEU's eligibility to participate in Title IV programs, SFAP also proposes to fine IEU \$275,000, arguing that the violations described above were volitional, repetitive and of a most serious nature. The Secretary has the authority to impose a fine on an institution of up to \$25,000 for each violation of a statutory or regulatory provision. 34 C.F.R. § 668.84(a). In assessing this fine, the gravity of the violations should be considered, as well as the size of the school. 34 C.F.R. § 668.92(a). The seriousness of the violations will be addressed below, and I find this is not a small school.

For IEU improperly requesting more funds than it needed for immediate disbursement, SFAP seeks a fine of \$75,000. This amount is based on a fine of \$25,000 for each of the three award years of the violations.[See footnote 8⁸](#) The gravity of IEU's retention of these excess Federal funds throughout the three year period warrants approval of \$75,000, the maximum amount of this fine. In conjunction with the excess cash situation, SFAP also seeks a fine of \$75,000 for using the excess Federal funds for unauthorized purposes over the period of the three award years. SFAP did not prove this allegation, so no fine is appropriate for this finding.

SFAP is seeking a fine of \$25,000 for IEU's overstatement of clock hours of instruction for award year 1993-94 and an additional \$25,000 for the award of excess Pell Grant funds to its students as a result of overstating these same clock hours. Having found the overstatement of clock hours of instruction is significantly less than advocated by SFAP, no fine is appropriate for this finding.

For failure to make refunds and failure to make timely refunds, SFAP seeks a fine of \$75,000, based on \$25,000 for each award year's violations. Once again, treating all late refunds occurring in each award year as one separate violation, I find that a fine of \$25,000 for each year, for a total fine for this finding of \$75,000 is appropriate, considering the disregard shown by IEU for regulations requiring a more timely payment of refunds.

In conclusion, I find that a total fine of \$150,000 for IEU's misconduct is appropriate.

ASSESSMENT OF PROGRAM LIABILITIES

In addition to the termination proceeding initiated under 34 C.F.R. Part 668, Subpart G, this hearing also addressed SFAP's efforts to assess liabilities against IEU pursuant to 34 C.F.R. Part 668, Subpart H, based on a final program review determination issued on June 3, 1996, and a final audit determination issued on June 28, 1996. This assessment of liabilities relates to the same determinations as were made in the termination proceeding, that is, IEU's maintaining excess cash, failure to make Federal Pell Grant refunds and failure to make refunds in a timely manner, overstating clock hours of instruction, and, although not included in the Subpart G proceeding, IEU's failure to accurately verify information submitted by one student.

For IEU's consistent maintenance of excess cash during the three award years, SFAP has assessed a liability of \$756,864. This amount represents \$213,917 for the imputed interest on these excess funds which were held by IEU in its account rather than returning them to the Federal account upon the realization that it had in excess of three days need. It also includes \$542,947 which represents the amount of excess cash remaining in IEU's Federal account at the conclusion of the three year program review period. I find that IEU must reimburse SFAP for both amounts.

Although I have found that IEU did not overstate its clock hours for the students in the day program for the 1993-94 award year, there is an overstatement of one-third of a clock hour per day for the students enrolled in its night program. IEU must recalculate the Pell Grant awards for the night students and reimburse SFAP for any resulting over awards. Additionally IEU must recalculate the number of clock hours for both programs for the 1994-95 award year, using the same formula as used for the 1993-94 award year, and then recalculate the Pell Grant awards accordingly. IEU must reimburse SFAP for any resulting 1994-95 over awards.

I have confirmed SFAP's finding that IEU made 1,668 late refunds for the 1992-93 and 1993-94 award years and the total dollar value of these late refunds of \$2,016,368. For these late refunds, SFAP is entitled to recover the interest on those late refunds at a rate of 3 percent per year. SFAP has computed this as \$15,544 for 1992-93 and \$18,427 for 1993-94. Additionally, I agree with SFAP's assertion that it is entitled to a refund from IEU of \$655,554 which was due for the 1994-95 award year, along with interest of \$28,561.

During the 1995 program review, it was discovered that IEU failed to conduct verification of information submitted by student number 27. IEU has not submitted satisfactory evidence to rebut this finding; therefore, it must repay SFAP the \$2,300 in Title IV funds paid to that student.

FINDINGS

1. IEU consistently maintained program funds in excess of its needs and must reimburse the Department \$756,864 for those excess funds and their costs.
2. IEU did not overstate the number of clock hours in its day program for the 1993-94 award year. It must recalculate the Pell Grant award for its 1993-94 night program, as well as both programs for the 1994-95 award year, and reimburse the Department for the over awards in Federal Pell Grant funds.
3. IEU failed to make timely refunds to the Pell Grant program for the 1992-93, 1993-94, and 1994-95 award years and must reimburse the Department \$62,532 in imputed interest costs of those late refunds. Further, IEU must reimburse the Department \$655,554 for its failure to make a refund payment for the 1994-95 award year.
4. IEU must reimburse the Department \$2,300 for its failure to verify the eligibility for student number 27.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Instituto de Educacion Universal to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated; that it pay a fine of \$150,000; and that it reimburse the Department \$1,477,230.

Judge Richard F. O'Hair

Dated: January 24, 1997

SERVICE

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

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[Footnote: 1](#) ¹ The final program review determination for award years 1992-93, 1993-94, and 1994- 95 was issued on June 3, 1996 and was assigned Docket No. 96-93-SP. On June 28, 1996, a final audit determination letter for award years 1991-92, 1992-93, and 1993-94 was issued and it was assigned Docket No. 96-103-SA.

[Footnote: 2](#) ² All cites refer to the 1994 Code of Federal Regulations, unless otherwise indicated.

[Footnote: 3](#) ³ The Department adopted a formal regulation, effective July 31, 1995, which embodies the previously established excess cash limitations. 34 C.F.R. § 668.166 (1995).

*[Footnote: 4](#) ⁴ See *In re Denver Paralegal Institute*, Dkt. No. 92-86-SP, 92-87-SA, U.S. Dept. of Education (Mar. 14, 1994), affirmed by the Secretary, Feb. 24, 1995; *In re MBTI Business Training Institute of Puerto Rico*, Dkt. No. 93-147-SA, U.S. Dept. of Education (Apr. 15, 1994).*

[Footnote: 5](#) ⁵ Rather than divide its day program classes into the more traditional arrangement consisting of six 50-minute periods of instruction followed by 10-minute breaks, IEU elected to combine the 10-minute breaks from the first five classes and give the students one 50-minute break during the school day which, depending on the students' schedules, is injected somewhere between one of the six instructional classes. Similar treatment is given to the 20-minute break for the night program.

[Footnote: 6](#) ⁶ Under the theory that a 50-minute class and a 10-minute break must occur within a consecutive 60-minute period, one can argue that the auditor's calculation of IEU's clock hours is erroneous because both day and night students had a full 60-minute class/break period for the last class of the session, as well as for the classes both before and after the aggregate 50-minute and 20-minute breaks. Applying 10 minute breaks to each of these three would reduce alleged over awards.

*[Footnote: 7](#) ⁷ *In re Allied Schools of Puerto Rico*, Dkt. No. 94-125-ST, U.S. Dep't of Education (Mar. 23, 1995), aff'd by the Secretary (Sept. 18, 1995).*

[Footnote: 8](#) ⁸ SFAP treats the excess cash violations occurring in an award year as one violation, rather than attempting to find a violation for each excess cash incident or occurrence.