

that UTT review the taxable and non-taxable income for each of the students listed on the FISAP for the 1991-92 and 1992-93 award years and make the necessary corrections. In response, UTT admitted that the data in the original FISAP was erroneous and it provided the corrected documentation. Ex. ED-4. SFAP then recalculated the school's 1993-94 and 1994-95 Campus-Based awards using the corrected information. Ex. ED-7 & 8. According to SFAP, the recalculation reveals that the school improperly received \$293,095 of Campus-Based program funds as a result of its submission of incorrect information. Ex. R-2 (Appendix B).

Under 34 C.F.R. § 668.116(d), UTT has the burden of proving that the expenditures questioned in the FPRD were proper and that the school complied with program requirements by presenting a *prima facie* case. Here, SFAP has alleged that UTT provided incorrect information on its FISAP. Furthermore, UTT admitted to that fact and provided corrected information. Finally, SFAP has submitted various documents to support its recalculation of UTT's awards. Ex. ED-4 through ED-8. Specifically, the calculations contained in Appendix B of the FPRD are documented at Ex. ED-7 and ED-8. Therefore, I find that SFAP has established a *prima facie* case.

Once SFAP has established a *prima facie* case, the burden then falls upon the institution to prove that the expenditures questioned in the FPRD were proper and that the school complied with program requirements. Here, UTT raises several arguments. First, the school questions the accuracy of SFAP's calculation of \$293,095 on the basis that SFAP was unable to provide UTT with the complete formula that it uses to calculate Title IV program funding for institutions. Other than to question the accuracy of SFAP's numbers, however, UTT has not provided any other data or calculations to refute the recalculation performed by SFAP or to otherwise document that the school's questioned expenditures were proper. The school states that it attempted to reconstruct the eligible aid applicant grids at issue and ascertain the effects of the inaccurate information contained in its original FISAPs, but that it was unable to calculate the exact monetary impact. This effort is insufficient to satisfy the school's burden of persuasion under 34 C.F.R. § 668.116(d). In *In re Phillips Colleges, Inc.*, Dkt. No. 93-39-SP, U.S. Dep't of Educ. (May 16, 1994), this tribunal stated:

Finally, [the school's] argument that the FPRD must be dismissed for SFAP's failure to carry its burden on the amount for which [the school] is liable is not persuasive. Ultimately, [the school] has the burden of proof as to compliance with the regulations and whether it owes the questioned funds here. 34 C.F.R. § 668.116(d). [The school's] lack of records and its inability to disprove what the reconstructed grids showed, clearly establishes that it has failed to carry its burden of proof.

Phillips at 4.

UTT also contends that it did not misuse the funds and that no overawards occurred. As SFAP correctly notes, however, it is well-settled that a school misuses Campus-Based program funds when it receives them as a result of providing incorrect FISAP income grid information. *In re Macomb Community College*, Dkt. No. 91-80-SP, U.S. Dep't of Educ. (May 5, 1993) at 7-8; *In re Phillips Colleges, Inc.*, Dkt. No. 93-39-SP, U.S. Dep't of Educ. (May 16, 1994) at 4; *In re Phillips Colleges, Inc.*, Dkt. No. 94-4-SP, U.S. Dep't of Educ. (Nov. 2, 1994) at 3. In addition, since UTT failed to provide any data or calculations to refute the recalculation performed by SFAP or to otherwise document that the school's questioned expenditures were proper, it has failed to prove its claim that no overawards occurred.

Finally, UTT alleges that there has been no allegation or showing of wrongful intent by UTT. SFAP is not required to allege or show wrongful intent in order to recover funds under a FPRD. If the FPRD finds that the institution did not properly document its expenditures and the institution cannot prove that its expenditures were proper, SFAP is entitled to recovery of the undocumented funds, regardless of whether the institution had any wrongful intent.

In conclusion, UTT has failed to satisfy its burden of persuasion under 34 C.F.R. § 668.116(d) to show that its expenditures were proper. Therefore, I find that UTT must refund the \$293,095 in questioned funds to the U.S. Department of Education.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the University of Texas at Tyler shall repay \$293,095 to the United States Department of Education in the manner authorized by law.

Judge Richard F. O'Hair

Dated: January 28, 1997

SERVICE

A copy of the attached document was sent to the following:

Hannah D. Huckaby, Esq.
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, TX 78701-2981

Stephen M. Kraut, Esq.
Office of the General Counsel
U.S. Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110

Footnote: 1 ¹In its initial brief, UTT requested the opportunity to file a brief in response to SFAP's brief. The tribunal issued an order granting UTT's request to file a reply brief and encouraging UTT to provide either substantive documentation for its claim that SFAP will not provide UTT with the formula by which UTT could verify SFAP's calculation of liability in this case or, in the alternative, an explanation of why UTT cannot perform this calculation utilizing the formula it applied during its initial award of benefits. Nonetheless, UTT did not avail itself of this opportunity.

Footnote: 2 ²The Campus-Based programs include the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study programs. 34 C.F.R. § 668.2.

Footnote: 3 ³In its appeal, UTT did not challenge findings 5 and 6 of the FPRD, so these two findings are not at issue here.

*Footnote: 4 ⁴Under the Campus-Based programs, ED distributes funds to institutions using a very complicated formula under which FISAP income grid information can affect awards for subsequent award years. For a more detailed discussion of how this formula works and the statutory and regulatory underpinnings, see SFAP Brief at 2-4. See also *In re Phillips Colleges, Inc.*, Dkt. No. 93-39-SP, U.S. Dep't of Educ. (May 16, 1994), at 2.*