

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

In the Matter of **Docket No. 97-46-SP**

CHATTAHOOCHEE TECHNICAL Student Financial **INSTITUTE,** Assistance
Proceeding

Respondent. PRCN: 199620412302

Appearances:

Leigh M. Manasevit, Esq., and Karen S. Lovitch, Esq., Brustein & Manasevit, Washington, D.C., for
Chattahoochee Technical Institute.

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

Before:

Ernest C. Canellos, Chief Judge

DECISION

Chattahoochee Technical Institute (CTI), is a state-supported postsecondary institution located in Marietta, Georgia, which offers programs in business, health management, and technical studies. It is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools and it participates in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV).

On February 15, 1996, the Atlanta Regional Office of the office of Student Financial Assistance Programs (SFAP), of the U.S. Department of Education (ED), issued a program review report of an on-site evaluation of CTI's Title IV compliance during the 1993-94, 1994-95, and 1995-96 award years. After considering CTI's submissions on the findings of the program review report, on February 26, 1997, a Final Program Review Determination (FPRD) was issued by SFAP's Case Management Division, Southeast. The FPRD determined that CTI had taken the necessary corrective actions to resolve a number of the findings in the program review report and they were, therefore, dismissed. The FPRD, however, affirmed seven of the adverse findings, two of which were considered as major. They were: (1) because of its failure to timely file payment vouchers in the 1993-94 award year, CTI's disbursements for Pell Grants exceeded its Pell Grant authorization level by \$120,699, an amount which must be returned, and (2) required verifications had not been properly accomplished in a number of instances resulting in CTI's inability to verify \$59,149 in Pell Grant payments. The additional findings and the corresponding amounts in issue were: there were overpayments to 12 students - \$914; one student's Student Aid Report was not signed - \$498; three students' enrollment status could not be verified - \$575; two students' eligibility could not be established - \$575; and three students' academic progress was incorrectly determined - \$3,191. The total demand in the FPRD was \$185, 601, but, as noted below, SFAP only seeks to recover

\$154,323 for findings 1 and 2 in this proceeding.

On April 21, 1997, CTI requested an administrative hearing in order to appeal the two major findings in the FPRD. It apparently chose not to appeal the remaining findings, therefore, they are not before me for adjudication. As to the first finding, in its appeal CTI disagrees with SFAP's claim that its Pell Grant expenditures were above its authorization limits. Rather, CTI claims the short-fall is only \$893.84 for the 1993-94 award year, which it agrees to pay. As to the second major finding relative to verification, CTI asserts partial compliance in that it had provided a required tax form for one student - \$431, and had verified the records for 42 students, thereby reducing the demand for the finding relative to verification by \$33,154.25. In addition, CTI claims that two students were double-counted resulting in a \$2,985 reduction. CTI, in effect, concedes the remaining findings. The matter was assigned to me for resolution and, in due course, the parties filed briefs [See footnote 1](#)¹ and I held an oral argument on November 13, 1997.

As to the first issue regarding the effect of the late submission of Pell Grant payment vouchers on CTI's Pell Grant authorization, the dispute between the parties is now narrowly focused on the legal effect of the timing of certain actions taken by CTI. In the Pell Grant program, an eligible institution is provided an initial authorization at the beginning of the award year based on the estimated need for funds. This authorization is adjusted upward and downward to reflect the actual disbursement to students. These disbursements to students are recorded on Student Aid Report (SAR) payment vouchers which are periodically filed with SFAP. In the particular situation before me, during the 1993-94 award year, SFAP alleges, and CTI does not dispute, that CTI failed to submit SAR payment vouchers for several students prior to the established September 30, 1994, cut-off date, as required by 34 C.F.R. § 690.83(a)(1)(I) (1993). Although SFAP originally claimed that all final SAR payment vouchers were required to be submitted prior to September 30, 1994, in order to be considered as effective, it now agrees that, in those cases where an initial SAR payment voucher was timely submitted, it would accept as valid any final payment vouchers filed after the cut-off date which adjusted a student's award. 34 C.F.R. § 690.83(c)(1). To fully accommodate this revised position, SFAP's brief adjusted its claim for the finding relative to Pell Grant expenditures above authorized levels by a reduction of \$10,226. As a consequence of SFAP's revised position, the remaining dispute between the parties involves only those cases where no payment voucher was submitted prior to the cut-off date. In any such situation, SFAP claims that Pell Grant funds should not have been applied to the respective students' accounts and, consistent with its obligation to protect Title IV funds, it must recoup all of the Title IV funds which fall within that category.

Precipitated by the findings in the on-site program review relative to the untimely filing of payment vouchers, SFAP directed CTI to perform a full-file review of its students for the award years in issue to determine the full extent of the question regarding the Pell Grant funding. Based on CTI's reconstruction of its Pell Grant account for the award year in question, SFAP reduced CTI's Pell Grant authorizations for the 1993-94 award year. Included in this reduction were instances where students were disbursed less aid than was originally drawn down for them; this act would, if properly and timely reflected in a SAR payment document, result in CTI's Pell Grant authorization being increased to reflect the lower payment and those additional funds made available for other students' grants. In cases where payment documents were not timely filed, SFAP refused to recognize such an adjustment, the result being that it appeared that CTI had expended more than it really had available. In addition, SFAP refused to raise CTI's Pell Grant authorization to account for cases where students were finally disbursed more federal aid than CTI had originally drawn down for them; the result, once again, is a situation where CTI appears, of record, to expend more in Pell Grants than it was authorized. CTI, on the other hand, urges that when SFAP "re-opens" the 1993-94 award year and, thereby, recoups Title IV funds which were adjusted downwards, it must give credit to CTI for those students whose awards "should be" adjusted upwards to reflect a higher Title IV award. In essence, CTI points out that if both types of after-the-fact adjustments were allowed, up as well as down, the difference between its Pell Grant authorization and expenditures for the 1993-94 award year is \$893.84, which it agrees to pay. Apparently, there were no questions regarding the eligibility of the respective students to receive the Pell Grants which are in issue. In addition, SFAP did not contest the figures presented by CTI and I find that the record supports them as correct.

As to the verification issue, [See footnote 2](#)² CTI agrees that it did not verify certain required information prior to the award as alleged, but argues that there was no harm to the federal interest because it did accomplish most of the verifications after-the-fact. In those cases where verification could not be accomplished at all, CTI agrees it must repay. Although SFAP, citing to *In re Knoxville College*, Docket No. 94-175-SP, U.S. Dep't of Educ. (July 3, 1995), had insisted in its brief that all verifications had to be accomplished prior to disbursement, it now argues that it actually did

review the after-the-fact verifications. It claims that these verifications, however, were mostly insufficient. In those cases where such after-the-fact verifications were supported by documentation which satisfied program requirements, such as a tax return which were signed before the disbursement, SFAP accepted them and reduced its demand accordingly. In review, for this finding, SFAP's original demand was \$59,149, its reduced demand is \$43,850, CTI concedes \$29,801 leaving \$14,049 in dispute. This dispute involves a number of students whose applications for federal student financial assistance were not timely verified, yet were disbursed Pell Grants. To have satisfied the verification requirement as to those students, CTI should have had the students sign their respective Electronic Student Aid Report (ESAR) prior to disbursement. However, CTI secured the signatures of 15 students after-the-fact, and argues that this constitutes adequate verification -- it shows that each of the students was eligible for the Pell Grant he/she received. SFAP, contrariwise, argues that this after-the-fact attempt at verification is questionable and insufficient and, therefore, the respective Pell Grants must be returned. I have reviewed CTI's submission and have determined that, except for the timing, such submission satisfies the verification requirement. *See generally In re Christian Brothers University*, Docket No. 96-4-SP, U.S. Dep't of Educ. (Jan. 8, 1997). In addition, my review of the submissions reveals no indication of fraud or any other impropriety, and none is alleged by SFAP. Finally, I note as significant that each of the students executed the ESAR under penalty of fine and imprisonment and SFAP has not presented any evidence which would contradict the affirmations contained therein.

As an initial matter, in this Subpart H appeal of a program review determination, CTI has the burden of proving that the questioned expenditures were proper and that it had complied with program requirements. 34 C.F.R. § 668.116(d). In addition, CTI acts as a fiduciary and, as such, is subject to the highest standard of care in accounting for Title IV funds it received. 34 C.F.R. § 668.82. SFAP posits that an overriding consideration is that the requirement to adequately and timely document Pell Grant expenditures is necessary so that ED can accurately control the cash flow process in the Pell Grant program.

As to the issue dealing with Pell Grant authorization, a novel situation is presented. This is so because, on the facts, federal student financial assistance disbursed to a particular student was apparently correct at the time it was made, but it was later determined as unauthorized and now must be returned solely on the basis of a subsequent event, a late filing of a voucher. This, of course, leads to the anomalous situation where SFAP demands the return of Pell Grant funds ostensibly because they were unauthorized, while at the same time recognizing that, when disbursed, they were authorized. Clearly, in any such situation, the particular student was entitled to the federal aid, and the issue before me is, can SFAP recoup the aid on the basis that it was misspent? An analogous situation arises as to the second issue, the one dealing with verification. As to the contested Pell Grants, the record indicates that the respective students were eligible to receive their grants. Therefore, the ultimate question is, are those sums misspent and subject to return because of CTI's administrative failings?

These questions are pertinent because it has been consistently held and SFAP has agreed that it can only recover that which it establishes as its actual losses in a Subpart H proceeding and, since its relief is contractually based, it cannot be unjustly enriched. Notably, SFAP has elected to bring this case under the procedures set forth under Subpart H -- audit and program review -- regulations when it issued its FPRD. In that respect, the remedies which are available to SFAP are limited by procedures and regulations applicable to the forum that it selects. Further, this tribunal has held in the past that a Subpart H proceeding cannot be used as a form of punishment and in lieu of other authorized actions which are designed to effectuate such punishment, i.e. a fine action under the provisions of Subpart G. We have recognized that this is so because the relative burdens on the parties in Subpart H and Subpart G proceedings are different; the respondent's evidentiary responsibilities are more onerous in the Subpart H proceeding. *See In re Macomb Community College*, Docket No. 91-80-SP, U. S. Dep't of Educ. (June 28, 1993). As a corollary, any violations of program regulations by CTI clearly are actionable in the appropriate forum, and the only question is, what is the correct forum? In cases such as this, where the evidence is clear that appropriate Pell Grants are disbursed to eligible students, administrative errors, such as those which are being litigated herein, are actionable through the medium of a Subpart G proceeding, not by the recoupment of the Pell Grants as misspent.

FINDINGS

Consistent with the above discussion, I find:

1. CTI failed to file Pell Grant payment vouchers on a timely basis in the 1993-94 award year, as required by 34 C.F.R. § 690.83(a)(1)(I).
2. CTI's Pell Grant expenditures over its Pell Grant authorization during the 1993-94 award year amounts to \$893.84.
3. Other than the amount covered in Finding #2, the federal funds that were applied to the Pell Grants in question were not misspent as that term is envisioned in Subpart H, 34 C.F.R. § 668.111 *et seq.*, and need not be repaid.
4. CTI failed to document that it had verified specified student data as required by 34 C.F.R. § 668.54 on a number of occasions during the 1993-94 and 1994-95 award years.
5. CTI established through after-the-fact signatures on the ESARs of 15 students in issue that the respective Pell grant awards were correct. As a consequence, CTI is relieved of the obligation to repay \$14,049.
6. On the facts of this case, the failure to verify prior to disbursement in those cases did not create a situation where the Pell Grant funds were misspent.
7. Although the amounts disbursed to students as Pell Grants in the above situations cannot be recovered as misspent, CTI's failure to comply with program regulations is actionable under Subpart G, 34 C.F.R. § 668.81 *et seq.*
8. In addition, although not technically part of this decision, CTI is obligated to pay \$5,753 for the findings which it did not appeal.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Chattahoochee Technical Institute pay to the United States Department of Education the sum of \$32,151.84, calculated as follows: \$893.84 for the first finding, \$29,801 for the second finding, and \$1,457 for students whose liability was established but was not included in the calculation of the second finding because they also were included in the first.

Ernest C. Canellos, Chief Judge

Dated: May 18, 1998

SERVICE

On May 18, 1998, a copy of the initial decision was sent by certified mail, return receipt requested to the following:

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Footnote: 1 ¹In its brief, SFAP adjusted its demand against CTI as follows: \$10,226 reduction in the claim for Pell Grant expenditures over authorized levels to account for upward adjustments for 19 students whose payment vouchers had been submitted prior to the cut-off date; a reduction of \$2,985 for two students who were counted twice; and a reduction of \$15,299 because of SFAP's acceptance of some of CTI's verifications. The revised total of SFAP's claims, both contested by CTI and not, amounts to \$160,076.

Footnote: 2 ²During the on-site review, CTI was unable to show that it had verified thirteen students selected for verification. Subsequently, CTI produced evidence to SFAP's satisfaction relative to eight of those students. In addition, CTI was required to perform a complete file review of the 1993-94 and 1994-95 award years for students selected for verification. As a result of that review, CTI identified mistakes in the Pell Grant awards for the 1993-94 award year (39 students - \$4808) and the 1994-95 award year (28 students - \$3886). In addition, CTI identified instances where verification could not be shown to have been correctly accomplished for the 1993-94 award year (57 students - \$40,910) and 1994-95 award year (27 students - \$6,961).
