

Statutes governing the Pell Grant program base a student's Pell Grant award on full-time enrollment status and require that the awards of students who attend on less than a full-time basis be reduced proportionately. 20 U.S.C. § 1070a(b)(2)(B) (1990). The implementing regulations are found at 34 C.F.R. §§ 690.63 and 690.75 (1990). These regulations provide that institutions that use academic terms of instruction, such as the College does, must disburse Pell Grant awards based on a student's "enrollment status" in each term. § 690.63(a). "Enrollment status" is defined as "full-time," "three-quarter-time," or "half-time." § 690.2. The institution is also required to maintain records documenting the student's admission to, and enrollment status at, the institution. § 668.23(f)(1)(i).

SFAP contends that the College overpaid \$406,435 of Pell Grant funds to co-op ed students because it incorrectly calculated their enrollment status. The FPRD based its finding upon the reviewer's conclusion that "the students only earned and were granted two or three hours of credit toward graduation upon completion of the class." It continued, stating that "[d]epending on the number of credits earned during the term, the student would be classified as full-time, three-quarter time, or half-time according to the definitions of full-time in the respective regulations." Therefore, it determined that the award of only two or three credits to these students was insufficient to classify them as full-time students and thus they were not entitled to the maximum Pell Grant awards. The College responds that all students enrolled for cooperative education credit were full-time students, regardless of the number of credit hours being taken or assigned to the students' programs.

According to the College's Handbook for 1990-91, full-time students were those students completing academic courses totaling twelve or more credit hours per academic term. Students completing less than twelve credit hours per academic term were considered to be part-time students. Ex. ED-1 at 23. The College's Handbook also states that "[a]ny student registered for cooperative education credit will be considered a full-time student during that term, regardless of the total number of credit hours being taken." Ex. ED-1 at 21. The Handbook further explains that students who are enrolled in the cooperative education program can meet their requirements in one of three ways:

1. Alternate full-time terms in the classroom with full-time terms of cooperative education employment over a ten-term period.
2. Attend classes on a half-day schedule, while simultaneously working half-time (or longer) cooperative education employment, for ten consecutive terms.
3. With certain approvals, substitute academic courses or previous related, documented work experience for cooperative education employment.

Ex. ED-1 at 21. The College also offers the affidavits of two witnesses that it claims are experts in the field. Ex. R-3, R-7. These witnesses state that the amount of work performed by students in the College's co-op education program is equivalent to the academic workload of a full-time student.

As SFAP notes, according to the College's own guidelines, a student who worked part-time and did not take any classes would not satisfy these co-op ed program requirements and thus would not qualify as a full-time student. The Handbook's later reference that any student registered for co-op ed credit will be considered a full-time student during the term regardless of the total number of credit hours taken can be read to be harmonious with these guidelines to the extent that under alternative (1) above, a student who was working full-time would not be attending any classes that term but would still be considered a full-time student. This cannot be read to imply that a student working part-time and attending no classes would also be considered a full-time student, as this would violate the College's own requirements under alternative (2) above. Moreover, this would not satisfy the requirement of § 690.2(6) that the amount of work performed by a full-time student in the co-op ed program be equivalent to the academic workload of a full-time student. Therefore, based upon the College's own guidelines, a student enrolled in a co-op ed course would not be a full-time student just by taking that course if the student elected not to work full-time and did not take other academic courses

such that the total workload was equivalent to that of a full-time student.

In its initial brief, the College argues that SFAP is applying an unauthorized addition to the regulations because it is requiring the College to award twelve credit hours per term to its full-time co-op ed students. Surprisingly, SFAP retreated from this position in its initial brief by acknowledging that:

SFAP does not dispute that under 34 CFR 690.2(6), Cinc Tech could consider a co-op ed student to be a full-time student for a term if the co-op ed student was working full-time (40 hours per week) in a co-op ed employment even if Cinc Tech awarded that student only two or three credits for that term. However, Cinc Tech automatically considered a co-op ed student to be full-time even if the student was not working full-time in that term.

SFAP Brief at 8-9.

The first sentence from SFAP's brief reported above negates the finding of the FPRD which asserts that the College cannot grant full-time student status to co-op ed students if it only awards two or three credits to the student for completing the class. This admission is tantamount to a withdrawal of Finding 1A from the scope of my review of this appeal. Thereafter, in the second statement in SFAP's brief, SFAP raises a new issue: whether the co-op ed students are working full-time, i.e., whether they are engaged in an amount of work which is equivalent to the academic workload of a full-time student. The FPRD did not challenge the equivalencies of work performed by the two groups of students and, therefore, presenting this allegation for the first time in its brief, SFAP has deprived the College of its right to notice. As such, it is unnecessary and improper for me to consider this newly raised issue. *See Liberty Academy of Business*, Dkt. No. 96-132-SP, U.S. Dep't of Educ. (Dec. 8, 1997). The FPRD erroneously relied on the fact that some of these students only earned one or two credit hours for its finding that the students were not full-time students. SFAP's subsequent attempts to recast its position do not cure that defect. Because I find that SFAP has effectively withdrawn Finding 1A, the College has no liability for that finding.

FPRD Finding 1B

The regulations contain a provision allowing an institution to disburse Pell Grants to registered students up to three weeks before the first day of classes of a payment period. Nonetheless, if a student officially or unofficially withdraws, drops out, or is expelled before the first day of classes, the entire payment is considered an overaward and the institution is required to return to the Department all Pell Grant funds disbursed to that student for that payment period. §§ 690.78(c) and 668.21. A student is considered to have dropped out before his or her first day of class if the institution is unable to document the student's attendance at any class during the payment period. § 668.21(b). Additionally, if a student's projected enrollment status changes before the student begins attendance in all of his or her classes, the institution is required to recalculate the student's award to reflect only those classes for which the student actually began attendance. § 690.80(b)(2)(ii). The regulations contrast this with situations where a student's projected enrollment status changes **after** the student has begun attendance in all of his or her classes. In those situations, the institution has the option of recalculating the student's award, but is not required to do this. § 690.80(b)(2)(i). In addition, Under § 668.23(f)(1)(i), the College was required to maintain records regarding each Title IV recipient's enrollment status at the institution.

The College, when challenged by SFAP to prove that its Pell Grant recipients actually began attending the classes upon which their grants were paid, was unable to comply with the request for those students who did not receive a passing grade for their enrolled courses, i.e., those who received letter grades of "W", "V", or "F" for their courses. This was due to the College's failure to require its teachers to take class attendance. However, it explained that its grading system serves as a satisfactory substitute for class attendance records, even for those students who did not receive a passing grade. These three grades are defined in its 1991-92 and 1992-93 catalogs as follows:

A student who wishes to withdraw from a course may do so from the first day of the third week through the Thursday of the eighth week and will receive a grade of "W" for the course.... A grade of "F" or an unofficial withdrawal represented by "V" may be assigned as the final grade in a course if a student discontinues attendance without officially dropping the course.

In its brief, the College further explained that a grade of “F” was given to a student because the quality of the work demonstrated that the student failed to minimally master the subject matter in a course or because the student did not complete course requirements. A grade of “V” was given to one who enrolled in a course, did not withdraw from the course, but stopped attending and meeting the course requirements. “W” grades were given to students who changed their enrollment status by officially withdrawing from a class, although the College had a policy that allowed a student to withdraw from a class only between the “first day of the third week through the Thursday of the eighth week.” From this analysis, the College argues that all students who received one of these three grades attended at least one class and thus satisfied the test for Pell Grant eligibility. SFAP conducted a poll of the College's faculty to discover how they applied this aspect of the grading system. It discovered that there was an absence of uniformity of application displayed among the faculty that negated the ability to generalize that the recipients of these grades had attended at least one class in that course during the term.

Next, the College contends that it was not required to take attendance for its students and that, at most, it should be liable only for Pell Grant funds expended on behalf of students who earned “W” grades, those who formally withdrew from their classes. In support of this, the College argues that there is no regulatory or statutory requirement that students attend every course in which they have enrolled. The College also argues that students who received a grade of “V” or “F” remained enrolled in the courses in which they received those grades throughout the payment period. The College points to the definition of “enrolled” found in § 668.2(b) as neither containing an attendance requirement nor requiring students to have submitted course work in order to be “enrolled.” The College also argues that this regulation previously contained an attendance requirement, but this requirement was specifically removed.

SFAP argues that the school can determine if a student changed his or her enrollment status before attending classes only by first determining if the student began attending classes in that course, and the regulations support that position. “Enrolled” is defined in § 668.2(b) as the status of a student who has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending. [See footnote 2²](#) Students have to be “enrolled” in order to receive Pell Grant payments. §§ 690.75(a)(2) and 690.2. The removal of the attendance requirement from the definition of enrolled is consistent with the regulations that authorize a school to make Pell Grant payments to students up to ten days before they begin attending classes (or by crediting their accounts up to three weeks prior to the first day of classes). § 690.78(b). These students are “enrolled” and eligible to receive Pell Grant payments even though they have not yet attended classes. It does not follow, however, that if these students fail to ever attend classes in these courses, their status does not change from “enrolled” to “unenrolled.”

The College's argument that SFAP's position mandates that an institution must monitor attendance and that this amounts to an academic issue, the regulation of which by the Department is prohibited by Section 432 of the Higher Education Act of 1965 (20 U.S.C. § 1232a), is incorrect. The regulations do not require institutions to adopt and monitor an attendance policy, but rather simply obligate institutions to document that students who receive federal Pell Grants actually begin attending the classes for which they enrolled. No specific attendance policy or requirement is placed upon the schools, and they can document the student's attendance in many different ways, such as through test scores or class work submitted. Since the regulations discussed above support SFAP's position, I do not find it necessary to resort to the Department's Student Financial Aid Handbook to resolve this issue.

The College relied on the students' enrollment status when calculating Pell Grant awards, but since the College did not require its faculty to take attendance, the only way to document that students attended at least one class in each course that made up their projected enrollment status is to rely on the students' grades in those courses. This is a simple task for those students who received passing grades; however, it is another matter for those who did not. Based upon the statements of various professors at the College, it is clear that the students could receive a grade of “F”, “V”, or “W” regardless of whether they ever attended a class in the course. As a result, the College cannot tell simply by looking at a student's grade whether that student ever began attending classes in that course. Therefore, I find the College is unable to document that the students who received these grades ever attended any classes in those courses and, therefore, cannot document that the Pell Grant payments to these students were authorized. The College must refund to the Department \$337,035 in overpaid Pell Grant funds.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Cincinnati State Technical and Community College shall refund to the United States Department of Education in the manner authorized by law \$337,035 in overpaid Pell Grant funds.

Judge Richard F. O'Hair

Dated: September 4, 1998

SERVICE

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

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Footnote: 1 ¹Unless otherwise noted, all cited regulations are contained in 34 C.F.R. and refer to the 1990 edition.

Footnote: 2 ²The alternative definition contained in part (b) of that section is not applicable here, since it applies only to correspondence study programs.