

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

In the Matter of

Docket No. 97-82-SP

COLLEGE AMERICA, PORTLAND,
Respondent.

Student Financial

Assistance Proceeding

PRCN: 199411000006

Appearances:

Glenn Bogart, Higher Education Compliance Consulting, Birmingham, Alabama, for College America, Portland, Oregon.

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

Before:

Judge Ernest C. Canellos

DECISION

On April 14, 1997, the office of Student Financial Assistance Programs (SFAP) of the United States Department of Education issued a final program review determination (FRPD) to College America, Portland (College America), covering its Title IV programs for the period between July 1, 1991, to June 30, 1993. SFAP assessed a total liability of \$20,802 against College America for incorrectly calculating refunds and failing to properly certify nine students' independent student status pursuant to 20 U.S.C. § 1070a-6(12) (1986) (repealed effective July 23, 1992) and 20 U.S.C. § 1087vv(d) (1987) (amended effective July 1, 1993). On May 22, 1997, College America requested an administrative hearing, appealing the findings relative to six of the nine instances concerning independent student status and also challenging SFAP's calculation of liability. College America did not appeal the finding concerning incorrect calculation of refunds, therefore, it is not before me for adjudication.

On June 25, 1997, I issued an Order Governing Proceedings requiring SFAP to demonstrate that the FRPD was properly issued by a designated official. [See footnote 1¹](#) In a letter dated August 22, 1997, in the interest of a quick resolution to the dispute, the representative for College America stipulated that the FRPD was properly issued. In its ensuing brief, College America asserts that SFAP does not have the authority to review the determinations made by the financial aid administrator and, even if it did, the documentation the institution provided for six of the nine students was sufficient to satisfy the regulatory requirements. In addition, College America challenges the use of the estimated actual loss formula as an unrealistic assessment of its liability.

Pursuant to 20 U.S.C. § 1087vv(d), an institution's financial aid administrator is required to "certify an individual [as independent] . . . on the basis of a demonstration made by the individual, but no disbursement of an award may be made without documentation." Additionally, 20 U.S.C. § 1070a-2 (1986) (repealed effective July 23, 1992) [See footnote 2²](#)

states that “[n]otwithstanding any other provision of law, the Secretary shall not have the authority to prescribe regulations to carry out this subpart” College America argues that taken together, these two provisions give the financial aid administrator unbridled authority to determine the sufficiency of documentation for independent student status. I find that College America's view on this issue is incorrect.

Although deference may be given to financial aid administrators for independent student status determinations, the school's determination is not dispositive. SFAP has the authority and, indeed, the responsibility to determine whether documents in the respective student files support the conclusion that the student meets the criteria of Section 1087vv(d). *See Dean's Westside Beauty College*, Docket No. 95-73-ST, U.S. Dep't of Educ., (Nov. 8, 1995). In addition, in this proceeding, the institution must come forward with evidence that demonstrates it can meet its burden of proof that six students in dispute were independent during the time period at issue. I will review each of the students at issue, seriatim.

The FRPD found student #48's independent status was not adequately documented because College America did not obtain the parent's 1992 or 1993 federal income tax return to demonstrate that neither parent claimed her as an exemption. College America asserts that the student's signed tax return, marriage certificate,[See footnote 3³](#) and an unsigned copy of the parents' joint 1991 tax return[See footnote 4⁴](#) is sufficient documentation to establish independent status. One way to obtain independent student status is to be married and declare that neither parent uses the student as an exemption on their tax returns. *See* 20 U.S.C. § 1087vv(d)(5). Student #48 provided College America with a copy of her marriage certificate, which is the clearest way to establish one's marital status. In addition, the student's tax return is signed under penalty of perjury and is sufficient to establish that neither parent claimed her as an exemption on their tax returns. I find that College America has met its burden of proof that the materials in student #48's file satisfy the requirement of 20 U.S.C. § 1087vv(d). Therefore, College America's liability should be reduced by \$3,869.23.[See footnote 5⁵](#)

In regards to student #51, the FPRD found that a letter signed by the student indicating parental disapproval of a student's choice of school did not constitute “unusual circumstances” such that a dependency status override was warranted. Under Title IV, a financial aid administrator should only issue a dependency status override if a student does not meet at least one of the first seven criteria listed in Section 1087vv(d) and provides the institution with other evidence that supports a conclusion of independent student status. *See Dean's Westside* at 5. The materials provided must be “documented in the student's file to such a degree that any reviewer can examine this information and easily determine the facts the institution relied on in this evaluation process.” *See id.* In the instant case, College America argues that the student's letter stating that her parents would not help her if she chose to attend the institution is a sufficient basis for the dependency status override. I disagree. To grant a dependency status override, the institution must have records supporting this decision. Examples of such records include students' or parents' tax returns or affidavits from parents or guardians indicating that the students were not claimed as a dependent. A student's letter could hardly be considered a record by which the financial aid administrator could base a decision. There is no evidence in the record that the administrator had even attempted to contact the parents to see if the student's letter was legitimate. Furthermore, the student indicated on her 1992-93 Free Application for Federal Student Aid (FAFSA) that her parents did claim her as an exemption during that fiscal year. In fact, the student's 1991 tax information indicates that she could not be considered an independent because she did not have resources of over \$4,000. Based on the above findings, College America's liability for student #51 is upheld.

The FRPD found that students #54, #60, #64, and #65 failed to meet the annual resources requirement of Section 1087vv(d). One method of qualifying as an independent student is for an individual to establish that he/she has resources in excess of \$4,000 a year. What constitutes resources is a source of contention between SFAP and the school. College America argues that the term “resources” should be construed broadly to include any non-parental support. SFAP asserts that “resources” only consist of non-parental gifts or loans, but not in-kind contributions. I find that SFAP's distinction between non-parental gifts or loans and in-kind, non-monetary contributions is unwarranted.

Section 1087vv(d) states that all sources of resources other than parents will be considered in demonstrating resources of \$4000. SFAP gives no rationale as to why gifts and loans would constitute resources, but in-kind support would not. There is no practical difference between a gift of money and a “gift” dedicated to a specific purpose. Thus, all non-parental contributions, including in-kind support, constitute resources for the establishment of independent student

status.

College America based its determination of student #54's independent status on a statement by the student that she paid all the utilities and food while her then-fiancé paid the rent. The school argues that by combining the \$3,486 on the student's 1990 income tax return [See footnote 6⁶](#) with the money her fiancé paid in rent, the total amounts to more than \$4,000, thus meeting the independent student status requirement. Although student #54 never stated the value of the rent her fiancé paid, it is reasonable to conclude that rent for one year is worth more than \$524. I find, therefore, that College America properly certified student #54 for independent student status, and reduce its liability by \$3,752.24. [See footnote 7⁷](#)

The FRPD also found that a \$3,225 payment from student #60's grandparents for rent, food, and clothing was insufficient to establish the requisite \$4,000 threshold. Student #60 provided a letter to College America stating that his grandparents, "gave to my family, a lump sum amount of money to live on." The logical inference to be taken from this statement is that the grandparents gave the money to the student's parents, who in turn gave money to the student. Since resources from parents cannot be counted, and College America never verified how the student obtained this money, the student's documentation is insufficient to establish independent student status. College America's liability for student #60 is upheld.

Student #64's submission of an unsigned 1990 tax return and a 1991 FAFSA is insufficient documentation to establish independent student status. SFAP correctly points out that allowing the FAFSA to be used as documentation would in effect read out the documentation requirement since a FAFSA merely informs the school of the status that the student is presenting. Furthermore, although Section 668.57(a)(i) does not govern independent student status, it is instructive. This regulation requires that tax returns be signed for verification purposes. In other words, when SFAP requires an institution to verify the student's claims in his FAFSA, it specifically requires the institution to obtain a **signed** copy of the relevant tax return. Similarly, in this proceeding, the institution is required to come forward with evidence sufficiently probative of the student status claimed in his FAFSA. I see no reason to view an unsigned copy of a tax return any differently here than in the verification regulations. I am not persuaded that these materials constitute documentation under 20 U.S.C. § 1087vv(d), therefore, College America's liability for student #64 is upheld.

Student #65's presentation of partially completed, signed, 1989 and 1990 tax returns from the mother, signed statements from the student that she lived rent free with her aunt and uncle, and a FAFSA do not constitute documentation indicating independent student status. Neither of these partial tax returns indicate that both of the student's parents did not claim her as a tax exemption. Since there is no indication that College America attempted to obtain the father's tax returns, the institution did not properly certify student #65 for independent student status. As a consequence, College America's liability for student # 65 is upheld.

College America's final argument is that the estimated actual loss formula is not an accurate representation of the Department's loss because it allows the Department to collect twice on loans; once when the school pays and again when the borrower is forced to pay the defaulted loan. This argument has been addressed by this tribunal before, and is consequently rejected as erroneous. *See Tiger Welding Institute*, Docket No. 97-39-SP, U.S. Dept of Educ. (August 12, 1998), *citing Christian Brothers University*, Docket No. 96-4-SP, U.S. Dep't of Educ. (January 8, 1997); *In Re Southern University*, Docket No. 92-102-SA, U.S. Dep't of Educ. (November 13, 1995).

ORDER

Accordingly, College America, Portland, is ordered to pay to the U.S. Department of Education \$13,180.53.

Ernest C. Canellos
Chief Judge

Dated: September 21, 1998

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 question of the FRPD's validity arose because it was signed by two individuals, and not one designated official. This is inconsistent with the manner in which the FRPDs are normally issued.

[Footnote: 2](#) ² Although the Secretary could prescribe regulations concerning the verification of independent student status, he did not promulgate any such regulation for the years in question.

[Footnote: 3](#) ³ The marriage certificate indicates that she was married at the time she received Title IV financial assistance.

[Footnote: 4](#) ⁴ The tax return was only signed by the student's mother.

[Footnote: 5](#) ⁵ This figure was determined by applying the estimated actual loss formula numbers supplied in the Department's Worksheet and then adding the amount of Pell and SEOG grants to the total figure.

[Footnote: 6](#) ⁶ The student's 1991 tax form indicates that no one else could claim her as an exemption on their returns.

[Footnote: 7](#) ⁷ This figure was calculated by applying the estimated actual loss formula to the amount of Title IV loan funds disbursed to students and adding the amount of Pell and SEOG grants awarded.
