

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

In the Matter of

Docket No. 98-131-SP

**ROXBOROUGH MEMORIAL HOSPITAL
SCHOOL OF NURSING,**

Student Financial
Assistance Proceeding

Respondent.

PRCN: 199610312186

Appearances: Feudi Pandola, Financial Aid Officer, Philadelphia, PA., for Roxborough Memorial Hospital School of Nursing

Stephen M. Kraut, 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

Roxborough Memorial Hospital School of Nursing (Roxborough) is a private two-year School of Nursing, located in Philadelphia, Pennsylvania. It is accredited by the National League of Nursing and the Pennsylvania State Board of Nursing and participates in the Federal Family Education Loan (FFEL) and the Pell Grant Programs, as authorized under the provisions of Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. ' 1070 *et seq.* and 42 U.S.C. ' 2751 *et seq.* The office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) administers these programs.

Reviewers from Region III of SFAP's Institutional Review Branch conducted a program review at Roxborough on October 23-27, 1995. The review examined Roxborough's compliance with HEA program regulations for award years 1993-1994, 1994-1995, and 1995-1996. On July 17, 1998, after reviewing comments from Roxborough, SFAP issued a final program review determination (FPRD) finding that Roxborough violated several HEA regulations. By letter dated August 22, 1998, Roxborough appealed the findings.

The first finding at issue concerns the wrongful disbursement of \$2300 in Federal Pell Grant funds to a student who had already earned a bachelor's degree. Roxborough defends its action by claiming that it was unaware of the degree status of the student. My review of the record, however, indicates that the student had listed his degree on his Application for Admission to Roxborough. Consequently, I find that Roxborough must return \$2300 to its Pell Grant

Account for the improper award. *See* 20 U.S.C. § 1070a(c)(1) and 34 C.F.R. § 690.6(a).

Second, SFAP seeks repayment of \$15,209.59 for improperly calculated refunds plus associated interest and special allowances (ISA) payments.^[1] Roxborough argues that of the 14 students who SFAP claims are due refunds, seven are not due such refund. This issue is centered on a dispute as to what constitutes the date of withdrawal. Roxborough claims that for a student who did not formally withdraw, the date of withdrawal is 30 days after the student's last day of attendance and any refund is calculated on that basis. It cites *The Federal Student Financial Aid Handbook, 1995-1996, Chapter 3, pages 3-96*, as authority for its position. Contrariwise, SFAP contends that such practice of adding 30 days to the last date of attendance is not authorized. The significance of this dispute is that it affects which refund formula applies – if a student has completed less than 50% of his/her course of study, a pro-rata refund must be paid. If its position relative to the date of withdrawal is correct, Roxborough is not required to pay a pro-rata refund to the seven students in dispute and, therefore, only owes \$5400 for this finding, which it agrees to pay.

I am not persuaded by the institution's position that it may add 30 days to the last day of attendance when calculating refunds due. It is abundantly clear that, under regulations then in force, the withdrawal date for a student who does not withdraw officially is the last recorded day of class attendance. 34 C.F.R. § 668.22(i)(A)(2) (1994). Since Roxborough failed to meet its burden of proving that its calculation of refund liability is correct, I find that it owes \$15,209.59 for improper refunds and ISA.

The third finding at issue concerns SFAP's claim that Roxborough improperly disbursed federal funds to 13 students who had previously attended a postsecondary institution without first requesting a financial aid transcript (FAT) from that previously attended institution, in violation of 34 C.F.R. § 668.19(a). During the course of this appellate process, Roxborough was able to provide FATs for two of these students and, in addition, established that a third student received less financial aid than originally alleged. After deducting the appropriate figure for these three students, SFAP now demands the return of \$24,080 in Pell Grant funds and \$7,321 in estimated actual losses for subsidized and unsubsidized FFEL Loans.

Roxborough does not argue that it complied with the regulations requiring it to request FATs for the 13 students. Rather, it points out that when it did belatedly receive the FATs for the two students enumerated above, they were determined to be eligible. It then posits that there is no reason to doubt that the other students were, likewise, eligible. I find that this conclusion is, at best, purely speculative and is not sufficient to satisfy Roxborough's burden of establishing that the federal student financial assistance was properly spent. In conclusion, I have determined that Roxborough owes \$31,401 for this finding.

Finally, SFAP claims that Roxborough failed to complete the verification process with regard to eight students who were selected for verification. Roxborough claims that it completed the verification process as to those students and offers as proof thereof, copies of PHEAA Verification Worksheets for each student. The documentation that is required to satisfy the verification requirement is spelled out in 34 C.F.R. § 668.57 (1994); no such documentation was ever provided. I find that Roxborough's presentation of the worksheets without the required backup evidence is insufficient to satisfy its burden of establishing that it properly verified the information regarding the eight students selected for verification. Consistent therewith, I find that Roxborough must return \$11,500 in Pell Grant funds and \$2,640.46 in estimated actual loss for ineligible FFEL funds.

Roxborough also claims that the liability imposed by the previous two findings is overstated. It is clear that SFAP applied the actual loss formula to determine liability. This formula computes the estimated actual loss that ED will ultimately suffer as a result of ineligible FFEL loans made to students. Under ED's past use of this formula, an institution's cohort default rate^[2] is multiplied by the amount of ineligible loans disbursed during a given award year to produce the estimated defaulted loans. This figure is added to estimated loan subsidies and special allowance payments made by the ED for those loans to yield the estimated actual loss liability. Here, Roxborough maintains that its FY 1993 cohort default rate (0.0%) rather than the FY 1995 rate (2.2%) should be used because it is established and more reasonable.^[3]

As stated in previous decisions, I have an obligation to determine the loss suffered by ED so as to fully compensate it, but not to enrich it. The estimated actual loss formula has been relied upon by SFAP in prior cases, and this tribunal has upheld the use of the formula "as a fair and accurate assessment of liability." *In the Matter of Jett College of Cosmetology and Barbering*, Docket No. 95-21-SP, U.S. Dep't of Educ. (October 19, 1995). *See also, In the Matter of Selan's System of Beauty Culture*, Docket No. 93-82-SP, U.S. Dep't of Educ. (December 19, 1994), and *In the Matter of Southeastern University*, Docket No. 92-102-SA, U.S. Dep't of Educ. (November 13, 1995), in which SFAP estimated actual loss by applying the cohort default rate. I am persuaded that the estimated actual loss formula, utilizing Roxborough's FY 1995 cohort default rate, the year in which the loans in issue came into repayment, is the appropriate method for determining liability here.

FINDINGS

I FIND the following:

1. Roxborough erroneously awarded \$2300 in Pell Grant funds to a student who already possessed a baccalaureate degree.
2. Roxborough improperly calculated refunds to students who dropped out prior to completion of their program and, as a result, must repay \$15,209 to ED.
3. Roxborough improperly awarded Pell Grant and FFEL funds to students who had previously attended a postsecondary institution without first obtaining a financial aid transcript, as required. It must return \$31,401 to ED for this finding.
4. Roxborough failed to verify information for eight students and, as a result, cannot establish that it properly disbursed \$14,140 in HEA funds.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Roxborough Memorial Hospital School of Nursing pay to the United States Department of Education the sum of \$63,050

Ernest C. Canellos
Chief Judge

Dated: January 20, 2000

SERVICE

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

Feudi Pandola
Roxborough Memorial Hospital School of Nursing
5800 Ridge Avenue
Philadelphia, PA 19128

Stephen M. Kraut, Esq.

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

[1] The ISA payment is owed as a result of applying an ISA formula to the total of improper funds. Our cases have consistently upheld SFAP's authority to recover ISA liability when loan funds are improperly spent. *See In the Matter of International Career Institute*, Docket No. 92-144-SP, U.S. Dep't of Educ. (July 7, 1994).

[2] The cohort default rate is that percentage of student borrowers who attended a particular institution, first enter repayment on their FFEL loans during a given fiscal year, and subsequently default on one or more of those loans during that year, or the following year.
20 U.S.C. ' 1085(m)(1).

[3] Roxborough's cohort default rates are: FY 1993 – 0.0%, FY 1994 – 3.4%, FY 1995 – 2.2% and FY 1996 – 4.6%.