

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

In the Matter of

Docket No. 98-145-SA

ROXBURY COMMUNITY COLLEGE,

Student Financial
Assistance Proceeding

Respondent.

ACN: 01-50091

Appearances: Neil M. Kerstein, Esq., Kerstein & Kerstein, Quincy, MA, for Roxbury Community College.

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

Roxbury Community College (Roxbury) is a state-funded community college located in Roxbury Crossing, Massachusetts. It is accredited by the New England Association of Schools and Colleges' Commission on Institutions of Higher Education and it participates in the Pell Grant Program, as authorized under the provisions of Title IV of the Higher Education Act of 1965, as amended (Title IV). 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 this program.

Auditors from ED's Office of Inspector General conducted an audit at Roxbury between October 31, 1994, and April 22, 1996. The audit focused on the Pell Grant funding of Roxbury's English as a Second Language (ESL) program for award years 1993-1994, and 1994-1995. On September 18, 1998, SFAP issued a final audit determination (FAD) finding that Roxbury violated Pell Grant regulations. By letter dated November 2, 1998, Roxbury appealed.

SFAP alleged that in the course of their on-site field work its auditors selected a sample of 414 student files, out of a universe of 1,063 students who had been awarded Pell Grants, to review for Title IV compliance. The resulting review revealed that of the sample, 103 students had checked a box on their student application which indicated they were enrolled in the English as a Second Language Program and not in any degree or certificate program. The transcripts of these students also categorized them only as ESL students and these students only attended ESL classes. Further, the auditors determined that the Respondent's ESL program was not eligible for funding under the Pell Grant program either as a stand-alone program or as a program designed to assist language-deficient students to utilize their existing skills. Roxbury conceded that its ESL program was not an eligible stand-alone program, but argued that all of the students were engaged in an authorized remedial ESL program as part of a larger associate degree liberal arts

program. Roxbury pointed out that its charter establishes an open enrollment system where all students who have a high school diploma or equivalent are admitted. After enrollment, the school then helps craft the most appropriate coursework for the students to follow. That being the case, Roxbury argued that each of the students was admitted to one of their authorized programs and, therefore, they were clearly eligible to participate in the Pell Grant Program.

The law governing this area is clear -- to receive a Pell Grant, a student must qualify as an eligible student enrolled in an eligible program. 34 C.F.R. § 668.7(a)(1)(i). Further, an eligible student attending an eligible program may receive Title IV funding for remedial coursework, including ESL, if such remedial work is a component of an eligible program. 34 C.F.R. § 668.20. It is equally clear that if a student is enrolled only in an ESL program that does not qualify as a stand-alone program, then that student is ineligible for Pell Grant funding. In the present action, SFAP argued that the Respondent's records show that the 103 students in the audited sample were enrolled in only the ESL program; therefore, they were ineligible for Pell Grant funding.^[1] I find that by its initial showing, SFAP has satisfied its burden of establishing a *prima facie* case of violation of Pell Grant regulations. Consequently, in order to prevail in this proceeding, the Respondent has the burden of proving that the students in issue were enrolled in an eligible program. 34 C.F.R. § 668.116(d).

As its initial position in its brief, the Respondent argued that these students were enrolled in one of its eligible Associate Degree programs and that SFAP had failed to prove that the students at issue were not enrolled in an eligible program. This argument stands the established burden of proof on end -- it is the Respondent that has the burden of convincing me that these students *were* enrolled in an eligible program, and not the other way around. If it fails to satisfy this burden, Roxbury must be required to return all the erroneously awarded Pell Grant funds.^[2]

Next, the Respondent made evidentiary submissions in an attempt to rebut SFAP's demand. It provided the applications for admission of 99 of the students in the sample, which originally listed only ESL as their desired course of study. Of those, 31 now show a dual enrollment in the ESL program and an eligible program, while 68 remained unchanged. Although there had been a change in status, nine of the 31 applications still bear the original date. SFAP argues that these submissions are unreliable and, therefore, I should disregard them as of no evidentiary value. It is clear to me that the belated amendment of the students' applications to conform them to Respondent's theory of the case, is suspect. I will, therefore, afford very little weight to that evidence in so far as it conflicts with the students' original declarations.

Despite my determination regarding the weight of the evidence, there is one aspect of this issue that needs further examination. That is, is there any other credible evidence from which I can reasonably infer that these students were dually enrolled? As a point of reference, in this proceeding, SFAP has accepted that one student who graduated from Roxbury's program was eligible to receive a Pell Grant even though that student had, like the other students, indicated apparent enrollment only in the ESL program. By this concession, SFAP obviously accepts the reality that by taking eligible college-level courses, a student may be eligible regardless of an initial declaration of intended course of study of ESL. Of course, Roxbury has continually insisted that the ESL program is but only one element of the course of study. In so far as this aspect is concerned, my review of the student files proffered by the Respondent reveals that 55 students had earned such college level credits. These ranged from as little as 1.5 credits to 59 credits. I also note that the significance of the students' declarations is, arguably, not great. One is left to ponder what did the students, whose English language skills were questionable, really intend by their declarations? It seems from the record that these notations were treated rather routinely and only became an issue when the students' Pell Grant entitlements were questioned.

Based upon the previous discussion and my review of the file, I find that Roxbury has failed to meet its burden of proof that the students who listed ESL as their course of study and who earned no other credits were eligible to receive Pell Grant funding. Further, I find that, based on the totality of the evidence, Roxbury has met its burden of establishing that the 55 students who earned the college credits enumerated above were eligible for Pell Grant funding.

Because of my mixed findings, I must determine the amount that Roxbury must return to ED for its erroneous disbursement of Pell Grant funds. Since the violations which were established were based on a review of a statistically significant sample, the amount that should be returned must be based on a consideration of the entire universe of

students. The extrapolation methodology of ascertaining losses of federal funds on the basis of findings relative to a statistically valid sample has been well recognized in our jurisprudence. *Chauffeur's Training School v. Riley*, No. 95 Civ. 1082 (N.D.N.Y. June 19, 1997). SFAP utilized this method to calculate its demand. It took the total Pell Grants that were awarded to the 102 students in the sample (\$220,861) and projected it to the universe of students, resulting in a demand of \$567,090. In order to arrive at a final liability for this finding, I must recalculate the demand by giving credit for the Pell Grants awarded to the 55 students who I have found to be eligible for their awards (\$142,778). After determining the difference between \$220,861 and \$142,778 (\$78,083) and extrapolating the result to the universe of students, I find that \$200,488 was improperly disbursed as a result of this violation.

In a secondary finding, SFAP determined that Roxbury had awarded \$1,075 to a fifteen year-old student in violation 34 C.F.R. § 668.7, which limits Pell Grant funding to students who have passed the age of compulsory education in the respective state. In Massachusetts, that age is sixteen years old. Since the Respondent failed to present any evidence to rebut the allegation, I find that Roxbury improperly expended \$1,075 in Pell Grant funds to that student.

FINDINGS

I FIND the following:

1. Roxbury erroneously awarded \$200,488 in Pell Grant funds to students who were enrolled exclusively in the English as a Second Language program and not in any authorized program.
2. Roxbury improperly awarded \$1,075 in Pell Grant funds to a 15 year-old student who was not yet above the 16 year-old age of compulsory school attendance.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Roxbury Community College repay to the United States Department of Education the sum of \$ 201,563.

Ernest C. Canellos
Chief Judge

Dated: May 10, 2000

SERVICE

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

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[1] SFAP concedes that one of the students did complete one of Roxbury's eligible programs, therefore, it accepts that this student was eligible to receive Pell Grant funding. As a result of such concession, SFAP reduced its demand for this finding from \$570,043 to \$567,090.

[2] The amount that must be returned is calculated by determining the amounts erroneously awarded to the students in the sample and projecting that total into the universe of students receiving Pell Grant awards.