

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

In the Matter of

Docket No. 98-16-SP

OCEAN COUNTY VOCATIONAL INSTITUTE,

Student Financial
Assistance Proceeding
PRCN: 199640212830

Respondent.

Appearances: Michelle Lakomy, Esq., Shea & Novy, Toms River, NJ, for Respondent.

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

Before: Richard I. Slippen, Administrative Judge

DECISION

On January 5, 1998, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (Department) issued a final program review determination (FPRD) of Ocean County Vocational Institute (OCVI) assessing liabilities for violations of Title IV of the Higher Education Act of 1965, as amended (HEA) during award years 1994-1995 and 1995-1996. 20 U.S.C. § 1070 *et seq.*

Located in Toms River, NJ, OCVI offers full-time adult training leading to certificates in nursing, cosmetology, aviation technology, and computer systems technology. The FPRD's findings included the school's failure to use a valid output document in the certification of Federal Family Education Loans (FFELs), failure to obtain complete verification documentation, failure to document a student's basis of admission, failure to comply with Title IV refund requirements, failure to obtain student signatures on updated student aid reports (SARs), and improper maintenance of excess cash balances.^[1] According to SFAP, the liability for these findings totaled \$67,975.

Finding No. 1: Invalid Output Document Used in the Certification of Federal Stafford Loans (FSLs)

In the FPRD, the Department found that a number of student files did not contain valid output documents. The Department found that the only need analysis document in these students' files was the New York State Higher Education Service Corporation's (NYHESC) need analysis system (HESC ABLE), which is not processed through the Central Processing System.

SFAP argues that the HESC ABLE is not considered to be a valid output document for the disbursement of Title IV funds. As a result, SFAP claims OCVI is liable for \$136,906 in FFEL subsidized loans and \$14,773 in FFEL unsubsidized loans for the 1994-95 and 1995-96 school years for those students whose output documents were not processed through the Central Processing System, as required by 34 C.F.R. § 668.2. The liability assessed by SFAP for this finding total \$46,895. OCVI claims the liability assessed for this finding should be reduced since an incorrect default rate was utilized in calculating the amount of the liability owed.^[2]

OCVI argues that it submitted students' information to a processing system which "performed the exact same function as that performed by CPS." OCVI feels that since the HESC ABLE need analysis was essentially the same as the one that would have been performed by the CPS, OCVI met its burden. OCVI also argues that it should not be held responsible for the liabilities because it was unaware that the HESC form was unacceptable and that its actions were unintentional.

The five elements to be used for the simplified need analysis are adjusted gross income, Federal taxes paid, untaxed income and benefits, the number of family members, and the number of family members in postsecondary education. 20 U.S.C.A. § 1087ss. To receive a Federal Stafford Loan under Title IV, a student must provide a valid output document including these elements. 34 C.F.R. § 668.2 (1996). An output document is a "Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or other automated data generated by the Department of Education's central processing system (CPS) or Multiple Data Entry (MDE) processing system as a result of the processing of data contained in a Free Application for Federal Student Aid (FAFSA)." 34 C.F.R. § 668.2(b). The regulations do not permit a processing system other than CPS or MDE to be used, but they do allow a non-federal entity such as HESC to perform the needs analysis test if the entity uses the FAFSA form.

Therefore, a non CPS system may perform the needs analysis, but only if it uses the FAFSA form. 34 C.F.R. § 668.2(b). OCVI did not demonstrate that NYHESC used the FAFSA form. Since OCVI failed to explain how the HESC ABLE system complied with the requirements of the regulation, it has failed to demonstrate that it complied with the regulatory requirement. In its brief, OCVI simply asserts that the system is the same as the CPS, but fails to explain how or why. Even if a form other than FAFSA were permissible, OCVI failed to demonstrate that the HESC ABLE form is an acceptable equivalent.

OCVI, a participant in Title IV programs, acts as a fiduciary for the benefit of the Department and its students. 34 C.F.R. § 668.82. As such, it is responsible for complying with all the Title IV requirements and obtaining the necessary information to meet its obligations regarding the administration of Title IV programs. 34 C.F.R. § 668.16(a). As OCVI bears the burden of establishing that all Title IV expenditures were proper, I find that OCVI has failed to meet its burden under 34 C.F.R. § 668.116(d). Therefore, OCVI remains liable for the \$46,895 assessed by the Department.

Finding #2: Incomplete or Missing Verification Documentation

During the award years in question, OCVI was required to verify the information on financial aid applications for students selected by the Department for verification. 34 C.F.R. § 668.54. To fulfill this requirement, a school must obtain acceptable documentation to verify items on students' financial aid applications such as adjusted gross income, income tax paid, and household size. 34 C.F.R. § 668.56. If the school does not verify information reported by the students, it cannot establish students' eligibility to receive Title IV assistance. During the initial program review, the SFAP found that OCVI did not complete verification for six students, so the school was asked to perform a full file review to determine the extent of the violations. OCVI discovered an additional 28 students for whom verification was incomplete.

In the FPRD, SFAP found that by failing to adequately perform verification, OCVI disbursed aid to students who were not eligible for financial assistance, thus causing the government an unnecessary expense of \$7,396 in Pell grants for the 1994-95 and 1995-96 school years. OCVI argues that the school did perform verification and that the only thing missing from the files of the students in question were signatures on the required tax returns and verification

worksheets, which OCVI argues is a mere technicality. SFAP does not agree; it is unwilling to concede that the signatures are a mere technicality.

The regulations specifically require a signature in order for documentation to be acceptable. 34 C.F.R. § 668.57(a)(i). If the tax form cannot be provided for some reason, the school may provide, in lieu of the signed form, a form from the IRS indicating the individual's tax account information. 34 C.F.R. §668.57(a). OCVI failed to produce this alternative form from the IRS for the students who did not sign their tax returns.

Accordingly, I hold in favor of SFAP on this finding and the liabilities assessed for this finding total \$7,396.

Finding #3: Lack of Documentation for Basis of Admission

Students must have a high school diploma, a general education diploma (GED), or must demonstrate the ability to benefit from the training offered at the school. 34 C.F.R. § 600.6, 668.7 (1995). A student who does not meet one of these requirements is not eligible for Title IV assistance. 34 C.F.R. § 668.7. In the program review report, SFAP found that OCVI failed to maintain documentation establishing that 5 students met any of these requirements. Subsequently, OCVI provided SFAP documentation establishing that 4 of the 5 students met the educational requirements. SFAP accepted OCVI's documentation.

OCVI admits liability for the remaining student.

Accordingly, I hold that OCVI remains liable for the reduced assessment of \$585.

Finding #4: Refunds - Fair and Equitable Policy Not Published or Utilized

SFAP's FPRD found that OCVI's failure to publish and/or utilize a fair and equitable refund policy in accordance with Department regulations may have deprived students of refunds and cause an increased expense for the Department. The liabilities assessed for this finding total \$9,031.

OCVI claims that it had an established fair and equitable refund policy for the relevant school years and that the policy was published on the student enrollment agreement. SFAP concedes that the policy was published, but does not agree that OCVI established that its policy provided for the largest refund for the students.

As of July 23, 1992, an institution that participates in the Title IV programs is required to utilize a fair and equitable refund policy. 20 U.S.C. § 1091b(a); 20 U.S.C. § 1088; 34 U.S.C. § 668.22(a). To be fair and equitable, an institution's refund policy must provide a refund in an amount that is the largest of (1) the requirements under State law; (2) the requirements of the institution's approved accrediting agency; or (3) the *pro rata* refund formula for first-time students, as provided in 20 U.S.C. § 1091b(b); 34 C.F.R. 668.22(b).

OCVI bears the burden of establishing that all Title IV expenditures were proper. 34 C.F.R. § 668.116(d). Since the school failed to show how its policy met the Title IV refund elements outlined above, OCVI must bear the costs of this violation. See *Universidad Eugenio Maria de Hostos*, Docket No. 96-126-SP, U.S. Dep't of Educ., (Feb. 19, 1998) (holding that a school is liable for failure to show how it applied its refund policy).

Finding #6: Student Certification - Unsigned Statements

According to the FPRD, OCVI failed to update several students' eligibility for Title IV HEA funds, which may have resulted in funds being disbursed to ineligible students. SFAP alleges three students who were disbursed Federal Pell Grants did not sign the certification statement of updated information and one student did not sign a statement of educational purpose and non-default.

OCVI concedes that it failed to obtain the required certifications. It argues, however, that it should not be assessed a liability because of the lack of signatures was merely a technical oversight.

SFAP claims that the lack of signatures must result in liability. SFAP argues that since the Department would have no way to know that a student is ineligible unless the school updates the forms, the Department could have disbursed funds to ineligible students and incurred a loss.

While OCVI argues that student signatures on SARs are a mere technicality that should be overlooked, SARs must be signed to be valid. *In re Knoxville College*, Docket No. 94-175-SP, U.S. Dep't of Educ., (Decision of the Secretary) (February 8, 1996); 34 C.F.R. § 690.2(1). Without a student's signature, the Department has no way of knowing a document is valid. The signature symbolizes assent to the contents of the document. Therefore, OCVI remains liable for this finding, totaling \$3,225.

Finding #7: Excess Cash Balances Maintained

An institution is required to maintain current financial records which reflect all Title IV program transactions. 20 U.S.C. § 1094(a)(3); 34 C.F.R. §§ 668.14(b)(4), 675.19, 676.19, 690.81. SFAP found that OCVI's failure to maintain current financial records resulted in excess cash balances. Since OCVI maintained excess cash, it had access to funds to which it was not entitled. The estimated increased cost to the government in interest expenses total \$843.

OCVI does not challenge the substance of this finding. Accordingly, OCVI remains liable to the Department for the \$843 misspent under this finding.

FINDINGS

1. OCVI used an invalid output document in certifying student FSLs.
2. OCVI maintained incomplete verification documentation.
3. OCVI failed to provide documentation of basis for admission for one student.
4. OCVI failed to publish a fair and equitable refund policy.
5. OCVI failed to update SARs with student signatures.
6. OCVI maintained excess cash balances.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Ocean County Vocational Institute pay to the U.S. Department of Education the sum of \$67,975.

Judge Richard I. Slippen

Dated: July 29, 1999

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 reduced its initial number of findings from ten to these six violations.

^[2] OCVI argues that an aggregate cohort default rate should be used to calculate the actual loss liabilities. However, SFAP correctly used the 1995 cohort default rate in calculating the actual loss liabilities, and this rate is lower than the aggregate rate requested by the school. *See In re Christian Bros. Univ.*, Docket No. 96-4-SP, U.S. Dep't of Educ. (Jan. 8, 1997) (holding that the applicable default rate used to calculate the estimated loss for FFEL loans for the years in question is the default rate for the program review period).