

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

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In the Matter of

**WESTECH COLLEGE,**  
**98-57-ST**

Respondent.

Financial

Programs

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**Docket No.**

Student

Assistance

**DECISION OF THE SECRETARY**

Westech College is located in Pomona, California, and educates ethnically diverse students largely from disadvantaged economic backgrounds. On November 5, 1997, the U.S. Department of Education (Department) notified Westech that its FY 1995 Federal Family Education Loan (FFEL) program cohort default rate (CDR) was 46.5 percent. Westech filed an appeal of FY 1995 CDR based on allegations of improper loan servicing pursuant to 34 C.F.R. § 668.17 (h)(3)(i), requesting a rate adjustment. The Department's Default Management Division (DMD) reviewed Westech's loan servicing records and determined that each loan had been serviced in accordance with the regulatory requirements. After a minor revision, on March 17, 1998, the Department issued an official notification of Westech's final FY 1995 CDR of 46.0 percent. On April 9, 1998, Student Financial Assistance Programs (SFAP) initiated an action to terminate the eligibility of Westech to participate in the Title IV programs because its FY 1995 CDR rate was over 40 percent. 34 C.F.R. § 668.17 (a)(2) (1998). Westech now appeals to this tribunal, arguing that the hearing official should have recalculated Respondent's final CDR.

Regulation 34 C.F.R. § 668.17(a)(2) provides that the Secretary may initiate a proceeding under Subpart G if an institution has a cohort default rate that exceeds 40 percent for any fiscal year. During such proceeding, SFAP must show that it has correctly calculated the cohort default rate for the institution and that it does indeed exceed 40 percent. The institution can prevail on appeal by establishing through clear and convincing evidence that the CDR calculated by SFAP is not the correct final rate, and that the correct rate would be less than the 40 percent threshold. 34 C.F.R. § 668.90 (a)(3)(iv).

In accordance with the applicable regulations, the hearing official must first determine whether SFAP has shown that the CDR was correctly calculated. 34 C.F.R. § 668.17(d). Thus, while the hearing official may not reconsider the substance of any pre-deprivation proceeding, the Judge should render a determination that the loans at issue did, in fact, default during the fiscal year in question, and were properly included in the subject cohort default year.

As I stated in my decision In the Matter of Westchester School of Beauty Culture, Docket No. 98-97-ST (August 19, 1999), the hearing official should begin his assessment by determining whether SFAP has shown that the CDR was calculated in a manner consistent with the definition of a CDR. See 34 C.F.R. § 668.17(d). In addressing this factor, the hearing official should note whether SFAP presented probative evidence that the elements noted in the CDR definition are met, including whether the minimum number of students entered repayment status for the fiscal year at issue, as required by the Higher Education Act. The hearing official must also determine whether the institution established, by clear and convincing evidence, that the rate used for the proposed action is not the final rate. 34 C.F.R. § 668.909(a)(3) (iv). Finally, the hearing official must rule on whether the institution established that the final CDR did not meet or

exceed the regulatory threshold that would subject the institution to further action, such as termination. 34 C.F.R. § 668.17.

In the instant case, it does not appear that Judge Canellos conducted the review as described above. Westech claims on appeal that the cohort default rate SFAP presented should not be considered final by the court. Thus, Westech requests that the case be remanded on this issue for further review.

Again, it is not apparent that the hearing official applied the standard of review required in the case at hand. Upon remand, the court should reconsider its decision in light of the standard of review set forth above. Based on the record before me, I remand this case to the Administrative Law Judge for further proceedings consistent with this decision.

So ordered this 3d day of January, 2001.

Washington, D.C.

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Judge Ernest C. Canellos  
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Office of Hearings and Appeals