

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

In the Matter of **Docket No. 99-15-SA**
HUMPHREYS COLLEGE, Student Financial Assistance Proceeding
Respondent. ACN: 09-1997-88205

Appearances:

Robert G. Humphreys, of Stockton, CA, for Humphreys College.

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

Before:

Judge Richard F. O'Hair

DECISION

Humphreys College (Humphreys) participates in the various student financial assistance programs authorized under 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.* These programs are administered by the office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED or Department). On December 15, 1998, SFAP issued a Final Audit Determination (FAD) in which it sought the return of \$25,967 in federal funds from Humphreys. On January 25, 1999, Humphreys filed a timely written request for review of the FAD. Both parties have filed submissions to this tribunal in support of their respective positions.

In Finding 1, SFAP contends that Humphreys distributed \$10,660 in Title IV funds to a student who was not eligible to receive Title IV funds because the student did not have a high school diploma, General Equivalency Diploma, or a passing score on an approved ability to benefit test. SFAP alleges that this instance of non-compliance was attributed to miscommunication between Humphreys' registrar's office and financial aid office. SFAP asserts that Humphreys must repay \$8,832¹ to the note holder of Stafford loans received by this student, and \$1,828 to the Department for Pell Grant funds disbursed to this student. SFAP is also demanding repayment to the lender of \$1,497 in interest expense paid on the loans, as well as repayment to the Department of \$226 in interest expense incurred for the ineligible Pell Grant funds.

In Finding 2, SFAP alleges that Humphreys distributed \$10,396 in Title IV funds to one student who was not eligible

to receive Title IV funds due to unsatisfactory academic progress. SFAP is seeking repayment of \$10,080 to the note holder of Stafford loans disbursed to this student, and \$316 to the Department for Pell Grant funds disbursed to this student. SFAP is also seeking repayment to the lender of \$2,328 in interest expense paid on the loans, as well as repayment to the Department of \$60 in interest expense incurred for the Pell Grant funds.

SFAP also orders repayment to the Department of \$800 in interest and special allowance for all of the ineligible Stafford loans disbursed to these two students.

As to both findings, Humphreys concedes the facts asserted by SFAP, but contends that these were isolated incidents that were the result of human error, rather than a lack of appropriate systems or an attempt to bypass regulations. Humphreys also notes that these are the only adverse findings that it has received. Finally, the school argues that repayment of these amounts would represent a substantial burden to the school that would impede its ability to provide quality, low cost, independent education to its students.

Under 34 C.F.R. § 668.116(d), Humphreys bears the burden in this proceeding of proving that the questioned expenditures were proper and that it complied with program requirements. Since Humphreys concedes the liabilities identified in the FAD, the only remaining issue is whether there is a legal basis for excusing these liabilities based upon the mitigating factors raised by the school. Although mitigating factors are appropriately considered by the tribunal in termination or fine cases brought under 34 C.F.R. Part 668, Subpart G, [See footnote 2²](#) there is no legal basis that authorizes the tribunal to consider such factors in audit or program review determination cases brought under 34 C.F.R. Part 668, Subpart H, such as the present case. In fact, the regulations specifically prohibit the hearing official from waiving applicable statutes and regulations. 34 C.F.R. § 668.117(d)(1). *See also In the Matter of Umpqua Community College*, Dkt. No. 96-159-SP (August 7, 1997). Therefore, I find that Humphreys must repay the amounts owed to the Department and to lenders identified in the FAD.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Humphreys College shall repay a total of \$25,967 to the United States Department of Education and the note holders in the amounts specified in the FAD.

Judge Richard F. O'Hair

Dated: May 18, 1999

SERVICE

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

Robert G. Humphreys
President
Humphreys College
6650 Inglewood Avenue at Benjamin Holt Drive
Stockton, CA 95207

Lee S. Harris, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.

[Footnote: 1](#)¹ The FAD incorrectly identified this amount as \$8,323 in the text of Finding 1, although it stated that this amount was derived from \$5,332 of unsubsidized Stafford loans and \$3,500 of subsidized Stafford loans disbursed to this student. These amounts add up to \$8,832. The total amount of \$10,660 identified in Finding 1 consists of the sum of the \$8,832 in Stafford loans and \$1,828 in Pell Grant funds.

[Footnote: 2](#)² 34 C.F.R. § 668.90(a)(2).