



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

In the Matter of

STONE CHILD COLLEGE,

Respondent.

Docket No. 04-23-SP

Federal Student
Aid Proceeding

PRCN: 2003-3082-1854

Appearances: Steve Galbavy, President, Stone Child College, Box Elder, MT, for Respondent.

Jennifer L. Woodward, Esq., Office of the General Counsel, United States
Department of Education, Washington, D.C., for Federal Student Aid Programs.

Before: Richard I. Slippen, Administrative Judge

DECISION

Stone Child College (Stone Child) operates as an institution that offers Associate of Arts degrees, Associate of Science degrees, Certificates of Completion for vocational programs, and non-degree courses. Stone Child participates in the federal student aid programs authorized under 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. § 2752 *et seq.* Stone Child appeals the U.S. Department of Education (Department), office of Federal Student Aid's (FSA) Final Program Review Determination (FPRD) dated February 27, 2004. Stone Child challenges three findings for which FSA seeks recovery of \$103,066.92. The findings at issue are as follows: Stone Child disbursed Title IV funds to students enrolled in an ineligible program (Finding No. 2); Stone Child disbursed Title IV funds to 33 students who did not meet the Ability-to-Benefit (ATB) eligibility requirements (Finding No.4); and Stone Child disbursed Title IV funds to one student who was not seeking a degree and to 11 students who were not in attendance for the period in which they were enrolled (Finding No. 5).

Finding No. 2: Ineligible Program

To be eligible to receive Title IV financial aid assistance, an eligible student must be enrolled in an eligible program. 34 C.F.R. § 668.7(a)(1)(i). To be an eligible program, the educational program must lead to a degree, or be at least a two-year academic program that is acceptable for full credit towards a bachelor's degree, or be at least a one year training program that leads to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation. 34 C.F.R. § 668.8.

According to FSA, three students out of a sample of 25 students received Title IV funds to complete the requirements for a Certificate of Attainment from the Professional Truck Driving Institute offered by Stone Child. FSA asserts that this program was identified as “Commercial Trk Drivin” on the three students’ academic transcripts. Because the truck-driving course was only six semester hours long, FSA argues that it did not constitute a Title IV eligible program. FSA then requested that Stone Child conduct a review of its entire student files to determine which students received Title IV funds for this program. Stone Child submitted a list of 22 students who received \$19,977 in Pell Grant funds to attend the truck-driving course. In the FPRD, FSA assessed liability in the amount of \$17,502.¹

For the two of the students at issue, FSA argues that one student (B.E.) received \$825.00 in Pell Grant funds for the Fall 2000 semester during which he only attended the truck-driving course. For the second student (D.S.), FSA asserts that a Pell Grant of \$1,650 was disbursed during the Fall 2000 semester during which he also only attended the truck-driving course.

Stone College argues that it used the Truck Driving Training course as a recruiting tool to bring in students who would then continue their education at the school. According to the school, it never sought eligibility for the truck-driving course on its own because the school had never declared it to be a program for a degree or certificate. Given the poor economic conditions and high unemployment rate in the community it serves, Stone Child argues that the truck driving program, among other courses it offers, brings students into the school where they are encouraged to seek a degree. Stone Child argues that the students at issue were students who fall in that category and had already become degree-seeking students.

¹ In its brief, FSA accepted evidence for two of the four students for whom the school appealed the liabilities. Accordingly, FSA reduced the liability by \$3,300. FSA, however, inadvertently deducted the \$3,300 from \$19,977 instead of from \$17,502, the reduction already noted in the FPRD. As the reduction contained in the FPRD was for two students other than the two FSA accepted documentation, the \$3,300 should have been subtracted from \$17,502. Consequently, the liability sought by FSA should be \$14,202.

Stone Child's Truck Driving Course is not an eligible program. To be eligible, a vocational program must be at least one academic year in length. The school's program was shorter and only provided students with six semester credit hours. Moreover, Stone Child admits that its Truck Driving Course is not an eligible program and that it did not seek Title IV eligibility for this program. Although the school asserts that two of the students included in this finding were enrolled in another eligible program, it fails to provide evidence that the students were enrolled in other eligible programs that they attended during the period for which each student received Title IV funds. Stone Child does not challenge the liability for the other remaining students included in this finding. Consequently, Stone Child is liable for \$14,202.

Finding No. 4 Ability-To-Benefit (ATB) Requirement

To be eligible to receive Title IV funds, a student must have a high school diploma, a general education development certificate (GED), or be beyond the age of compulsory secondary school attendance and have the ability to benefit from the educational program provided by the school. 20 U.S.C. § 1091 and 34 C.F.R. § 668.32(e). A student without a high school diploma or GED must pass an independently administered ability to benefit (ATB) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2).

According to FSA, 33 students were not eligible to receive Title IV funds because they did not possess a high school diploma, a GED, or pass an independently administered ATB test. Based on the file review done by Stone Child, FSA assessed liability in the amount of \$78,407.92. Stone Child only appealed the liability assessed for 19 of the 33 students listed in the FPRD. In its brief, FSA accepts documentation submitted by the school demonstrating that four students either obtained a GED or graduated from high school. Accordingly, FSA reduced the liability sought to \$69,370.42.

Stone Child argues that the students in question benefited from the education they received at the school either by transferring to a four-year college or obtaining gainful employment. The school argues that the primary purpose of the ATB requirement is to give students a chance to further their education and improve their employment prospects. Additionally, Stone Child asserts that it believed that its students had passed an ATB test.

The Secretary has held that passing an ATB test is a strict criterion of student eligibility. *See In re Pan American School*, Docket No. 91-94-SA, U.S. Dep't of Educ., (Decision of the Secretary) (January 12, 1995). If a student was never eligible to receive Title IV funds, the fact that the student graduated does not cure his or her ineligibility to receive funds. *See In re Hamilton Professional Schools*, Docket No. 02-49-SP, U.S. Dep't of Educ. (June 11, 2003) and *In re Teddy Ulmo Institute*, Docket No. 03-42-SF (April 5, 2005). This tribunal has also held that students' ultimate completion of their academic program does not mitigate the fact that an institution awarded Title IV assistance to students who were ineligible to receive the assistance under the standards measured by Congress. *See In re Umpqua Community College*, Docket No. 96-159-SP, U.S. Dep't of Educ. (August 7, 1997).

The tribunal is persuaded that two additional students took and passed their GED tests.² Stone Child's evidence that the remaining students at issue either met the ATB requirement or benefited despite not meeting this requirement, is not persuasive. For three students, Stone Child argues to no avail that these students attempted and failed to pass their GED tests.³ For the students Stone Child states are gainfully employed or attending a four-year college, the school did not submit evidence beyond its mere assertion. Stone Child also failed to submit any evidence demonstrating that the students at issue completed their programs of study. Moreover, despite the school's assertion that the remaining students benefited from their education, passing an ATB test is a fundamental requirement for Title IV eligibility. Stone Child's liability for this finding totals \$61,930.42.

Finding No. 5 Ineligible Pell Disbursements

To be eligible to receive Title IV funds, a student must be a regular student enrolled or accepted for enrollment in an eligible program at an eligible school. 34 C.F.R. § 668.32(a)(1)(i). A regular student is defined as an individual who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential. 34 C.F.R. § 600.2.

FSA alleges that Stone Child disbursed Pell funds to one student who was not seeking a degree during the time period for which he received funds.⁴ FSA also alleges that the school disbursed Pell funds to 11 students who did not attend any classes. FSA argues that Stone Child offered no evidence to prove that any of the 12 students at issue were eligible to receive Title IV funds. For the non-degree seeking student, FSA asserts that the student's own application states that he is not seeking a degree. FSA states that the student's application for re-admission, dated May 21, 2001, which states he is seeking a degree, is not relevant to whether he was seeking a degree during the period (September 9, 1998 through May 20, 2001) for which he received Pell funds. FSA also asserts that for the remaining 11 students, the school's documents list these students as having completed zero days and are noted as "did not attend." FSA states that it instructed the school as to what documentation would be appropriate to demonstrate that these 11 students attended classes (i.e. transcripts). According to FSA, Stone Child never submitted any documentation.⁵

² See Respondent's April 6, 2004, request for an appeal and attached documentation. FSA, unfortunately, neglected to number the students in this finding. Consequently, the tribunal identifies these two students by their initials (J.C. and R.F). The liability assessed in the FPRD for these students is \$7,440.

³ Stone Child submitted documentation that these three students failed their GED tests, and thus, confirmed these students' ineligibility to receive Title IV funds.

⁴ The student is identified as Student No. 18 in the FPRD.

⁵ See ED Ex. 2 (Declaration of Kerry L. O'Brien, Program Reviewer, U.S. Dep't of Educ, dated October 20, 2004).

Stone Child states that it is appealing this finding because when Department reviewers visited the school, it had just moved buildings and its records were still being sorted. Stone Child also states that it has found the required paperwork and has hired additional staff to meet its paperwork demands.

In a Subpart H proceeding, the tribunal must determine whether the school has met its burden of proof showing that the Title IV expenditures questioned in the FPRD were disbursed properly. 34 C.F.R. § 668.116(d). In this regard, the tribunal must examine the record to determine whether the evidentiary submissions from the institution document or account for the institution's expenditure of Title IV funds. *See In re Stenotopia Business School*, Docket No. 01-26-SP, U.S. Dep't of Educ. (July 31, 2002), quoting *Jesode Hatorah*, Docket No. 95-57-SP, U.S. Dep't of Educ. (June 29, 1995). Stone Child failed to submit any documentation to the tribunal demonstrating that the students at issue attended classes at the school. Moreover, Stone Child has offered no other evidence to contradict the FPRD's finding, nor does it offer any argument relevant to this finding. Stone Child disbursed Pell funds to students who were not eligible to receive these funds. Consequently, Stone Child is liable for \$11,369.50.⁶

ORDER

On the basis of the foregoing, it is hereby ORDERED that Stone Child College pay to the U.S. Department of Education the sum of \$87,501.92.

Judge Richard I. Slippen

Dated: August 22, 2005

⁶ In its brief, FSA states the liability as \$17,019.50. The FPRD, however, identifies a lower liability because liability was already assessed for three students under Finding No. 2. The duplicate liability subtracted is \$5,650. As a result, the liability for this finding totals \$11,369.50 (\$17,019.50 - \$5,650).

SERVICE

A copy of the attached document was sent to the following:

Steve Galbavy
President
Stone Child College
RR1 Box 1082
Box Elder, MT 59521

Jennifer L. Woodward, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2111