



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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In the Matter of

Docket No. 11-55-SA

Central State University,

Respondent.

DECISION ON REMAND

On June 29, 2011, the Department of Education, Office of Federal Student Aid (FSA) issued a Final Audit Determination (FAD) to Central State University (CSU). In that FAD, the FSA listed nine findings in regards to CSU's handling of federal student aid. FSA and CSU had resolved all issues in the FAD, with the exception of Finding No. 7, which CSU appealed to the Office of Hearings and Appeals (OHA). In the Initial Decision, Administrative Judge Richard I. Slippen determined that Central State University did not properly verify eight of the ten students, and found CSU liable for the federal aid disbursed to those students. For the remaining two students, #33 and #75, Judge Slippen determined that CSU had properly completed verification and thus could not be held liable.

FSA then appealed the decision to the Secretary of Education, but only as it related to Student No. 33. On appeal, FSA posited that the Tribunal had failed to consider its argument that CSU had not resolved discrepancies in the tax information in Student #33's file.¹ CSU responded that they did not have an obligation to verify student #33's claim of independence, had additional documentation that demonstrated his independence, and did not have to obtain parental tax information. In his Decision and Order of Remand, filed on July 23, 2014, the Secretary determined that the verification issue had been properly raised before the Tribunal, and remanded the decision to "determine whether Respondent resolved discrepancies in Student #33's file and if not, what liabilities attach." *In the Matter of Central State University*, U.S. Dep't of Educ. Dkt. No. 11-55-SA (July 23, 2014) (Decision of the Secretary and Order of Remand).

On remand, FSA renews its argument that CSU failed to resolve the discrepancies in Student #33's file and therefore is liable for the loans dispersed to the student. CSU argues that it had enough documentation to complete the verification process. Before the Tribunal may

¹ Specifically, that the student had listed himself as an orphan/ward of the court on his Free Application for Federal Student Aid (FAFSA), but did not check the box for a personal exemption on his tax return.

address the merits of FSA's failure to resolve discrepancies argument, however, it must first determine if FSA can alter the basis of CSU's liability in its brief; namely, at issue is whether FSA may alter the finding it seeks to recover during the hearing process without running afoul basic principles of due process. The Due Process Clause affords parties in administrative proceedings be an opportunity to be heard, and requires that the respondent be given timely and adequate notice of the reasons for the proposed action against them. *Goldberg v. Kelly*, 397 U.S. 254, 267-8 (1970). This tribunal has interpreted this to mean that after FSA issues its final audit determination, the Department of Education cannot change the legal or factual basis of its liability without authorized leave from the tribunal to amend the FAD calculation. See *In the Matter of Liberty Academy of Business*, U.S. Dep't of Educ. Dkt. No. 96-132-SA (April 7, 1999) (Decision on Remand); *In the Matter of Contempo School of Beauty*, U.S. Dep't of Educ. Dkt. No. 98-110-SA (Feb. 3, 1999).

In the FAD, Finding No. 7 addressed all the verification violations of CSU. In Appendix I, FSA listed all of the verification violations by student with an indication of the type of violation. Under Student #33, the entry says, "No parental tax information." R-1-43.² CSU responded to this entry, stating that Student #33 was an orphan or ward of the court, and therefore did not need to file parental tax information. R-2-1. FSA's argument on remand, appeal, and in its Initial Brief, however, does not address the claim that CSU failed to collect parental tax information. Instead, as FSA's Initial Brief states, "the absence of parental tax information is not the basis for claiming that verification was not performed in this instance. Rather, Student #33's file documentation contained information that conflicts with his claim that he is an orphan or ward of the court, and it is that conflict that requires resolution." Initial Brief of FSA at 4-5. This argument presents an entirely new basis of liability for CSU, and gives CSU neither timely nor proper notice. As such, CSU cannot be found liable for their failure to verify conflicting tax information in Student #33's file and no liability should attach.³

With no new liabilities, CSU's Pell Grant liability remains unchanged from Judge Slippen's initial decision: \$103,368.08 in liability calculated using the extrapolation formula of FSA⁴ and Pell Grant cost of funds of \$3,593.81. For FFEL liability, FSA used the estimated loss formula, but did not provide enough information for Judge Slippen to recalculate the liability. FSA has since performed that recalculation, indicating that CSU's liability for estimated actual

² Under the column for violation type for Students Nos. 62, 102 and 209, FSA did specify that CSU failed to resolve discrepant information in the students' files.

³ Even if FSA's claim was properly raised, CSU cannot be found liable. There must be some actual harm to FSA in order to assess liability. *Chicago State University*, Dept. of Educ. Dkt. No. 94-172-SA (April 26, 1996). The funds disbursed to Student No. 33 were calculated on the basis that he was an independent student. In his decision, the Secretary noted that "...the student [Student No. 33] was deemed independent, which was determined by the student's service in the Ohio Army National Guard and other records". Decision and Order of Remand at 4. Additionally, the Secretary noted that FSA did not appeal Judge Slippen's finding that Student #33 was independent. *Id.* Because Student No. 33 was deemed independent, and eligible for the funds disbursed, FSA has not demonstrated that CSU has caused actual harm to the department by approving loans for Student No. 33.

⁴ FSA used the following calculation: \$26,115 of Pell grant liabilities ÷ 287 (students in sample) x 1,136 (total number of students at CSU) = 103,368.08.

loss is \$31,410.03. Therefore, the total liability of CSU will be \$138,371.92.

ORDER

ACCORDINGLY, Respondent successfully completed verification for Student No. 33 and is not liable for federal aid disbursed to Student No. 33.

IT IS HEREBY ORDERED that Respondent pay the U.S. Department of Education \$138,371.92 for Pell Grant liabilities, Pell Grant cost of funds, and projected estimated loss funds.

Rod Dixon
Chief Administrative Law Judge

Dated: December 8, 2014