



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

In the Matter of

NORTHWEST FLORIDA STATE COLLEGE,
Respondent

Docket No. 12-18-SA

**Federal Student
Aid Proceeding**
ACN: 04-2010-11831

Appearances: Hayward Dykes Jr., Esq., and Levin F. Bracken, Esq., Conerly, Bowman & Dykes,
Destin, Florida for Respondent

Russell B. Wolff, Esq., Office of the General Counsel, United States Department of
Education, Washington, D.C., for Federal Student Aid

Before: Richard I. Slippen, Administrative Judge

DECISION

Respondent, Northwest Florida State College (NWFSC), operates as an institution of higher education in Niceville, Florida and 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 administered by the Office of Federal Student Aid (FSA or the Department), United States Department of Education.

On January 18, 2012, FSA issued a final audit determination (FAD) letter to NWFSC advising the institution of two findings. Respondent appeals the first finding, which found that NWFSC failed to apply its published satisfactory academic progress (SAP) policy. FSA contends that NWFSC failed to demonstrate that it established, published, and applied reasonable standards for measuring whether an otherwise eligible student was maintaining satisfactory academic progress in his or her educational program, as it was required to do so under 34 C.F.R. § 668.16(e). In the FAD, FSA states that NWFSC supplied state auditors with copies of two differing SAP policies that allegedly were in effect for the 2009-2010 academic year. The FAD assessed liabilities in the amount of \$340,545 for the institution's alleged failure to apply its published SAP policy for 176 students.¹ In this proceeding, Respondent bears the burden of demonstrating that it complied with Title IV requirements. 34 C.F.R. 668.116(d).²

¹ This amount does not include \$300 in liabilities for a second finding that Respondent does not appeal.

² In respondent's brief, dated April 19, 2012, NWFSC requested that oral arguments be heard on this matter. Under 34 C.F.R. § 668.116, oral arguments may be heard if the hearing official determines that an oral argument is necessary to clarify the issues and positions of the parties presented in their written submission. I hereby deny

NWFSC has two SAP policies. The first, known, as the Catalog SAP, and the second, known as the Revised SAP. The Catalog SAP does not provide for the use of a probationary period before a student is determined to have failed to make SAP, while such a probationary period is contained in the Revised SAP.³ The parties do not dispute the substantive standards of the catalog and revised SAP policies. Instead, the parties disagree about which SAP policy should have applied for the award year at issue.

Under 34 C.F.R. § 668.16(e), an institution “for [the] purposes of determining student eligibility for assistance under a Title IV, HEA program, [an institution] establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory academic progress in his or her educational program.” An institution’s published policy must be one in which its provisions have been made public.⁴ A student is only eligible to receive Title IV funds if he/she “maintains satisfactory progress in his or her course of study according to the institution’s published standards.” 34 C.F.R. § 668.32(f)

The Catalog SAP

FSA contends that NWFSC failed to demonstrate that it applied its published SAP policy, which was contained in its Catalog. According to FSA, an institution’s SAP policy, as published in its catalog, is “the most common and basic document in which a SAP policy is typically published, and, in fact were respondent’s SAP policy was published.” In addition, FSA claims that the catalog SAP policy was also published in the NWFSC Policy and Procedures Manual. Neither document mentions a probationary period for measuring SAP. Respondent asserts that the catalog SAP policy is an outdated policy that had not been properly updated in the school’s catalog. Because this policy was printed in the school’s catalog, which is inferably available to the public, those individuals meeting SAP and failing to meet SAP, I find that the catalog SAP was the published SAP policy during the 2009-2010 award year. Although the catalog SAP was published, it was not applied. Respondent admits that it applied its revised SAP policy, not its catalog SAP policy, as a means for measuring whether a student was maintaining satisfactory academic progress. FSA’s audit determination supports the Respondent’s claim. Therefore, I find that the catalog was not established, published, and *applied* as required by § 668.16(e).

The Revised SAP

Respondent argues that its Revised SAP policy was established, published and in effect during the award year at issue. According to Respondent, the institution published its revised SAP policy when it sent students their 2009-2010 financial aid award letter at the beginning of the Fall 2009 semester.⁵ This letter submitted by NWFSC fails to show that the Respondent published its revised SAP policy to the public. There is no persuasive proof that the Satisfactory Academic Progress Policy letter accompanied a student aid letter or was sent to *all* students enrolled in

NWFSC’s request for an oral argument. I find that an oral argument is unnecessary to further clarify the issues in this proceeding.

³ For the 176 students at issue, the institution applied the Revised SAP policy, which contained a probationary period, to determine that whether students were maintaining SAP, and thus eligible to receive Title IV funds.

⁴ See *Chicago State University*, Docket No. 94-172-SA, Dep’t of Educ. (April 26, 1996), *In re Santa Clara Beauty College*, Docket No. 94-24-SP, U.S. Dep’t of Educ. (November 14, 1994), affirmed by the Secretary (July 15, 1995).

⁵ Resp. Brief at 3.

NWFSC, and not just those individuals who failed to meet SAP. NWFSC also claims that its revised SAP policy was published on the institution's website; however, NWFSC provides no evidence demonstrating that its revised SAP policy appeared on its website during the 2009-2010 academic year. Therefore, I find that the revised SAP policy was not established, *published*, and applied as required by § 668.16(e).

Even if both SAP policies were established, published and applied reasonable standards for measuring SAP, which was not the instance in this case, both policies cannot be implemented at one institution without creating inconsistencies in an institution's ability to measure whether a student is maintaining SAP in his or her educational program. A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs (*referring to Title IV and HEA programs*). § 668.82 (b)(1). It is an institution's fiduciary responsibility to ensure that funds are properly directed to the correct source and therefore institutions must ensure that student financial aid documentation is accurate.⁶ If either the revised SAP policy or catalog SAP policy was the institution's practiced SAP policy as NWFSC claims, the institution should have taken the necessary steps to ensure that all financial documentation established, published, and applied was consistent in all print and electronic forms of communication. Nonetheless, NWFSC did not properly review its financial aid documentation, thus creating a discrepancy in how a student's academic progress is measured. Therefore, I find that NWFSC has neither acted with the highest standard of care and diligence in administering federal education funds nor met its burden of proof in this case.

ORDER

On the basis of the foregoing, it is hereby ORDERED the Northwest Florida State College pay \$340, 845 to the United States Department of Education.

Richard I. Slippen,
Administrative Judge

Dated: _____

⁶ *Anthony's Barber Styling College*, Docket No. 97-1-SP, U.S. Dep't of Educ. (August 1, 1997).

SERVICE

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

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