



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of
Webster Career College, Inc.

Docket No. 91-39-SP

Student Financial
Assistance Proceeding

DECISION OF THE SECRETARY

This case comes before the Secretary on appeal by Webster Career College, Inc. (Webster) of the Initial Decision of Administrative Law Judge Paul J. Clerman (ALJ) dated October 29, 1992.

In his decision, the ALJ determined that Webster's conversion of its program from clock hours to semester hours resulted in an excessive and unreasonable number of semester hours, which inflated Webster's participation in Title IV, Higher Education Act of 1965, as amended, student financial assistance (SFA) programs in violation of the requirements of Webster's accrediting agency, the Association of Independent Colleges and Schools (AICS), and the Office of Student Financial Assistance Programs, U.S. Department of Education (OSFA). The ALJ directed Webster to repay an estimated \$4.5 million for Pell Grant overpayments during award years 1984-85 through 1988-89, and an additional estimated \$1.2 million for award year 1989-90.

In addition, the ALJ ordered Webster to repay \$122,047, plus interest, of monies received from federal SFA programs for students enrolled in ineligible programs.

On February 23, 1993, Webster filed a motion requesting to file a supplemental brief in support of its appeal. The Secretary finds that a supplemental brief is unnecessary for consideration of the issues at hand, and hereby denies the motion.

On appeal, the Secretary wishes to address the following issues:

1. Whether OSFA is statutorily prohibited from evaluating an institution's conversion from clock hours to credit hours for purposes of calculating the institution's appropriate level of participation in SFA programs?
2. Whether the Initial Decision is in error by concluding that Webster's conversion from clock to credit hours was improper because Webster ignored academic equivalency requirements?

The Secretary finds that the remaining issues raised by Webster's appeal were adequately addressed by the ALJ's Initial Decision. Therefore, the ALJ's Initial Decision is adopted as the final decision of the Department subject to the clarification below.

DISCUSSION

1. ***Whether OSFA is statutorily prohibited from evaluating an institution's conversion from clock hours to credit hours for purposes of calculating the institution's appropriate level of participation in SFA programs?***

On appeal, Webster argues that OSFA does not have the authority to make determinations about the appropriateness of the length of an institution's courses. In support of this argument, Webster relies on 20 U.S.C. §1232a, which states --

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

Webster argues that course length determinations directly relate to the quality of the instructional program and are therefore prohibited.¹ In response, OSFA argues that the quantity of education provided is separate and apart from the quality of education provided in that program.²

The Secretary acknowledges the general prohibition against interference with issues properly reserved for local determination.³ However, in the case of federal SFA programs Congress has charged that "the term 'academic year shall be defined by the Secretary by regulation."⁴ Clearly Congress has determined that establishing a quantity of educational services

¹ Webster's Brief, page 10.

² OSFA Brief, page 54.

³ 20 U.S.C. §1232a.

⁴ 20 U.S.C. §1088 (d).

to be delivered for purposes of calculating an appropriate level of federal funding is within the authority of the Secretary. The prohibitions of §1232a do not prevent the Secretary from regulating in this area.

2. Whether the Initial Decision is in error by concluding that Webster's conversion from clock to credit hours was improper because Webster ignored academic equivalency requirements?

In his Initial Decision, the ALJ found that OSFA "has consistently maintained that an academic year is typically eight or nine months in which a full-time student is expected to complete at least 900 clock hours or 24 semester or 36 quarter hours. A semester is commonly defined as an academic term of 15 to 18 weeks and a quarter as an academic term lasting three months."⁵ The ALJ also noted that OSFA's audit report referenced a 1979 policy statement made by the Bureau of Student Financial Assistance, Office of Education, Department of Health, Education, and Welfare (BSFA Bulletin) which stated --

...if an institution converted from clock to credit hours, the new ratio of hours to academic year should be the same as the ratio of hours to academic year as under the previous method...a program of less than 900 clock hours could not be

⁵ Initial Decision, at 11.

The term "academic year" has been defined by regulation as --

(1) A period of time generally of not less than 8 months in which a full-time student would normally be expected to complete the equivalent of at least two semesters, two trimesters or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system; or

(b) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(c) At least 900 clock hours of training for each program at an institution which measures academic progress in clock hours.

converted to a full academic year solely by changing the means of measurement to semesters, trimesters or quarters.⁶

The ALJ found that Webster's conversion of its programs from clock to credit hours resulted in a 600 clock hour program (.67 academic year) converting into a 40 credit hour program (1.43 academic years). Through this conversion, the ALJ found that Webster increased the amount of Pell Grant program funds that its students could receive per program from \$1400 to \$2940 without any additional instruction or course work.⁷ The ALJ held that Webster's conversion of its programs from clock hours to credit hours resulted in an "excessive and unreasonable" number of credit hours.⁸

On appeal, Webster argues that the ALJ has applied a mathematical equivalency test -- requiring that each hour of instruction be supported by two hours of outside preparation to qualify for conversion. Webster claims that the ALJ based this test on the BSFA Bulletin which is not binding law, and which does not even

⁶ Initial Decision, at 11. The complete policy statement reads as follows --

- Relative equivalency of the units used to measure an "academic year."

The regulations define an "academic year" as the period of time in which a full-time student is expected to complete the equivalent of at least 2 semester[s], 2 trimesters, 3 quarters, or 900 clock hours, depending on the unit of measurement the institution uses. These minimums are intended to establish relatively equivalent periods of time for institutions using different units to measure program length. Thus, if an institution currently measuring a program in clock hours were to convert that program to semester, trimester, or quarter hours, the program itself should still constitute the same portion of an academic year as it did under the previous method of measuring it. For example, a 900 clock hour program could be converted to a program of two semester[s] or three quarters, i.e., another means of measuring the minimum period of time for a full academic year. However, a program of less than 900 clock hours could not be converted to a full academic year merely by changing the means of measurement to semesters, trimesters, or quarters.

Department of Health, Education, and Welfare, Office of Education, Bureau of Student Financial Assistance Bulletin, March 1979, at 3.

⁷ Initial Decision, at 11 and 12.

⁸ Initial Decision, at 45.

represent a binding interpretation by the Department of the applicable regulations.⁹

The Secretary finds Webster's argument misplaced. Although the ALJ referenced a portion of the BSFA Bulletin, he did not rely on a strict mathematical equivalency test. Rather, in reaching his conclusions the ALJ relied on the definitions of credit hour and clock hour used by the postsecondary education industry; and specifically cited AICS' evaluation procedures and criteria --

The AICS' evaluation procedures and criteria state that when exercising their professional judgement to determine a credit recommendation, review team members consider the following factors...

"c. ...Normally academic credit is assigned on the basis of one semester credit hour for each 15 classroom contact hours plus 30 hours of outside preparation or equivalent; one semester credit hour for each 30 hours of laboratory work plus necessary outside preparation or equivalent..."¹⁰

Indeed, Webster acknowledges that the industry defines a credit hour to include a ratio of two to one, outside preparation to classroom instruction --

Webster does not dispute that a common definition of credit hour is based on a 2 to 1 relationship between outside preparation and classroom lecture.¹¹

Webster's argument fails to recognize the fundamental difference between a "clock hour" of instruction -- where the nature and content of the material presented does not require significant outside preparation -- and a "credit hour" -- where the nature and content of the material presented normally requires two hours of outside preparation. Obviously, these definitions are not absolute. They require the exercise of professional judgement. That is the present role of the accrediting institution. In the instant case, the ALJ found that the accrediting institution failed to exercise its professional judgement and that Webster's conversion was excessive and unreasonable. I agree.

⁹ Webster's brief, at 13 to 19.

¹⁰ Initial Decision, at 34 to 35. Citing AICS evaluation procedures and criteria.

¹¹ Webster's brief, at 22.

Further, the ALJ's limited reference to the BSFA Bulletin -- although somewhat confusing -- remains an accurate statement. If an accrediting agency, using its professional judgement, has determined that a program of education is equivalent to a specific portion of an academic year using clock hours; conversion of that program to credit hours, without changing educational content, should result in roughly the same conclusion. While minor variations resulting from a conversion may be expected due to differences in professional opinion and incremental changes in program content since it was initially certified using clock hours; significant variations unsupported by significant changes in program content are inherently illogical. Institutions seeking to increase their level of participation in SFA programs solely by converting the method of measurement from clock to credit hours should be prepared to justify any modifications to their accrediting agency and ultimately the program auditors. Webster failed to do so.

CONCLUSION

The Initial Decision of the ALJ is hereby adopted as the final decision of the Department, subject only to the clarifications presented above.

So ordered this 23rd day of July, 1993.


Richard W. Riley

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