



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

In the Matter of

**SHELBY STATE COMMUNITY
COLLEGE**

Respondent.

**Docket No. 96-135-SP
Student Financial
Assistance Proceeding
PRCN: 95404014**

DECISION OF THE SECRETARY

On June 3, 1997, Judge Frank K. Krueger, Jr. issued an initial decision in the above-captioned proceeding. Judge Krueger's decision held that Shelby State Community College, Respondent, was liable in the amount of \$451,493.67 for Federal Pell Grant Program funds awarded to students without any documentation of attendance, as required under 34 C.F.R. § 668.21(b)¹. After a period of unsuccessful negotiations, Respondent appealed.

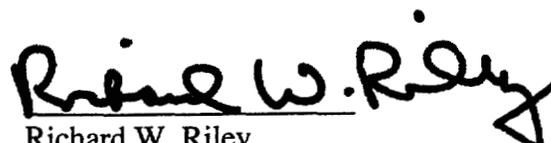
On appeal, Respondent asserts that its liability should be reduced. Specifically, Respondent points to an attendance policy it initiated after the review conducted by the Office of Student Financial Assistance Programs, (SFAP). Respondent states that its new attendance recording practices revealed that over a one year period only one percent of the Federal Pell Grant funds disbursed went to students who did not attend class. Respondent further argues that if this attendance policy had been in effect at the time of SFAP's review similar findings would have been produced. Consequently, Respondent contends that its total liability of \$451,493.67 should be reduced to one percent of that amount, or to \$133,752. I disagree.

Under 34 C.F.R. § 668.119(c), the party appealing a hearing official's decision may not introduce new evidence on appeal. The evidence in this case shows that Respondent awarded in \$451,493.67 Federal Pell Grant Funds to students without attendance documentation. There is no evidence on record to support Respondent's arguments made on appeal. Further, to prevail on appeal Respondent must establish that it properly disbursed the Pell Grant funds at issue. *See* 34 C.F.R. § 668.116. However, Respondent remains unable to produce the required documentation needed to establish that the awards at issue were properly disbursed. Therefore, Respondent's liability should not be further reduced.

¹ After Respondent submitted supportive documentation, Judge Krueger reduced the original amount of liability from \$584,413.67 to \$451,493.67.

Accordingly, Judge Krueger's decision is hereby affirmed and Respondent is ordered to satisfy its liability in the amount of \$451, 493.67.

Washington, DC
September 1, 1998


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Frank K. Kruerger
Administrative Judge
Office of Hearings and Appeals