



UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

In the Matter of

INSTITUTO de EDUCACION UNIVERSAL

Docket No. 96-28-ST
Docket No. 96-93-SP
Docket No. 96-103-SA

Respondent.

Student Financial
Assistance Proceedings
PRCN: 199530200074
ACN: 02-40075

DECISION OF THE SECRETARY

I. Procedure & Facts

In 1994, the Office of Inspector General, (OIG) of the Department of Education, (Department) conducted an audit of Instituto de Educacion Universal's, (IEU's) administration of the financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended. 20 U.S.C. § 1020, and 42 U.S.C. § 2751. As a result of the audit, OIG determined that IEU committed the following violations: 1) IEU requested Title IV funds in excess of its immediate need; 2) IEU used Title IV funds for unauthorized purposes¹; and 3) IEU overstated clock hours of instruction and improperly disbursed Pell Grants to students. The Final Audit Determination, (FAD) against IEU issued by the Office of Student Financial Assistance Programs, (SFAP) assessed liability in the amount of \$756, 864 for the excess cash violation and \$1,284,900 for the overstatement of clock hours.

SFAP also conducted a program review. This review determined that IEU failed to make Pell Grant refunds and failed to make refunds in a timely manner. SFAP's Final Program Review Determination, (FPRD) assessed a liability against IEU in the amount of \$720,836. On March 12, 1996, SFAP issued notice of intent to terminate the eligibility of IEU to participate in the student financial assistance programs, and to fine the school \$275,000. In response, IEU requested a hearing to contest the termination and fine. All of the matters were consolidated and a hearing was held in San Juan, Puerto Rico on October 22-23, 1996.

On January 24, 1997, Judge F. O'Hair issued a decision upholding IEU's termination.

The Administrative Court properly determined that insufficient evidence existed to support a finding that IEU expended funds for unauthorized purposes.

imposing a fine of \$150,000 and assessing liability in the amount of \$1,477,230. The Court found: 1) IEU consistently maintained program funds in excess of its need, and must reimburse the Department \$756,864 for those excess funds and their costs; 2) IEU failed to make timely refunds to the Pell Grant program for the 1992-93, 1993-94 and 1994-95 award years and must reimburse the Department \$62,532 in imputed interest costs of those late refunds; 3) IEU must reimburse the Department \$655,554 for its failure to make a refund payment for the 1994-95 award year; and 4) IEU must reimburse the Department \$2,300 for its failure to verify the eligibility for student number 27. Judge O'Hair, however, found in favor of Respondent on the issue of clock hours, determining that IEU did not overstate the number of clock hours in its programs.

On March 4, 1997, IEU appealed the Administrative Judge's decision. IEU asserts on appeal that the Court erred when it determined that: 1) IEU maintained excess cash; 2) IEU failed to pay refunds during the 1994-95 award year, and failed to make timely refunds during the 1992-93 and 1993-94 award years; 3) IEU should be fined \$150,000; and 4) IEU's eligibility to participate in the Title IV, HEA programs should be terminated. SFAP appealed the Judge's finding that IEU did not overstate its number of clock hours.

II. Discussion

A. Respondent is Liable for the Maintenance of Excess Cash and Must Repay the Department for Interest Accrued.

The Administrative Court determined that IEU improperly maintained excess cash beyond its immediate need by drawing down funds that were not disbursed to students or returned to the Department within a three day period². 31 C.F.R. § 205.4(a) (1988) provides that:

Cash advances to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs.³

²This determination is also supported by Recipient's Guide to the Payment Management System, Chapter 5, 6 (October 1995).

³In July of 1995 the Department codified 34 C.F.R. § 668.166, which defines excess cash as "any amount of Title IV, HEA program funds, other than FFEL or Federal Perkins Loan Program funds, that an institution does not disburse to students by the end of the third business

Under this provision, and in accordance with its administrative duty to competently administer Title IV programs⁴, an institution is expected to return funds in excess of its immediate need. The audit conducted by OIG for the period of July 1, 1991 to June 30, 1994 revealed IEU maintained excess cash balances at the end of each month, except two months, one in 1991 and one in 1993. The average excess cash balance at the end of the month was \$1,367,783. In response to the OIG audit, IEU admitted to maintaining excess cash. At trial, however, IEU presented testimony stating that the funds in question were properly credited within three days of their draw down, but posted at a later date. In several instances the credits were posted months after the financial event occurred, which was clearly not timely under the regulations.

Respondent failed to produce any evidence refuting the audit finding. In fact, the evidence reviewed by OIG and the Court was directly provided by Respondent. Thus, the Court correctly found Respondent's testimony unpersuasive. Accordingly, by maintaining excess funds IEU was able to earn interest on Federal dollars. This interest represents earnings the Department was precluded from accumulating. Accordingly, IEU must pay the costs associated with maintaining excess cash in the amount of \$756,864.

B. IEU Must Reimburse the Department for the Interest Costs Associated with Refund Violations.

To participate in any Title IV program, institutions must maintain a fair and equitable refund policy. This policy provides for the return of the unearned portion of tuition and any other fees, for any student who receives Title IV assistance and later withdraws, drops out, or is expelled after the first day of the payment period. 34 C.F.R. § 668.22(a). This refund must be made within 30 days of the date the student discontinues the program. 34 C.F.R. § 668.22(g)(2)(iv) (1994). IEU admitted that its usual refunding practice was to offset refunds against future draw downs from the Pell Grant Account each September following the award year. Decision at 3; SFAP Brief at 8. IEU compiled a list of late, or unpaid, refunds which disclosed 803 late refunds, totaling \$971,914 for the 1992-93 award year; 865 late refunds, totaling \$1,044,454 for the 1993-94 award year; and as of the time of the review, IEU failed to make 512 refunds totaling \$655,554, for the 1994-95 award year. Decision at p.8. All refunds were paid for the 1992-93 and 1993-94 award years at the time of the review. Id. Again, this data was compiled and provided by IEU, and fully supports the Court's determination that Respondent failed to make timely refunds, as required.

IEU's contention that the refunds due in the 1994-95 award year have been satisfied is also unsupported by the evidence. The Court properly held that without evidence of IEU's

day following the date the institution received those funds." It was not until this rule that the three day requirement was explicit in the regulations.

⁴34 C.F.R. § 668.82

forbearance of awards associated with the enrollment of additional eligible students, its reduction of authorization in the Pell Grant Account does not clearly demonstrate the necessary refunds.

C. The Administrative Court Erred When it Determined that Respondent did not Overstate the Number of Clock Hours in Its Program During the 1993-94 Award Year.

IEU offers two clock hour programs. The day program is scheduled from 8:00 a.m. to 1:50 p.m and consists of six 50 minute periods of instruction, with a 50 minute break scheduled between classes. This program is 350 minutes in length, including 300 minutes of instruction. The night program is scheduled from 6:00 p.m. to 10:30 p.m. and consists of five 50 minute periods of instruction, with a 20 minute break scheduled between classes. This program is 270 minutes in length, including 250 minutes of instruction.

During an audit in 1994, OIG found that IEU overstated the number of clock hours in its programs when it aggregated the total minutes of instructional time and divided that number by 50 minutes, instead of 60 minutes, as required by the regulations. IEU's method of calculation reflected that its day program consisted of 6 clock hours, (300 minutes divided by 50), and the night program consisted of 5 clock hours, (250 minutes divided by 50). On June 28, 1996, SFAP determined that this calculation method used by Respondent was incorrect and resulted in IEU overcharging the Pell Grant program an average of \$1,284, 900 per year, by disbursing funds to students before they completed the regulatory clock hours of instruction. Respondent appealed.

On appeal, the Court found that IEU did not over award Pell Grants to students enrolled in the day program, and that the school over awarded only one-third of a clock hour per day for the students enrolled in the night program. The calculations used by the Court combined the total instructional and non-instructional time to arrive at the clock hour figure. Decision at 7. After combining the non-instructional and instructional time, the Court also added a 10 minute imputed break at the end of the school day and divided that total number of minutes by 60 to determine the number of clock hours for each program. Under this method, the day program consisted of 6 clock hours, (300 minutes of instructional time, 50 minutes of non-instruction time, and a 10 minute imputed break, divided by 60), and the night program consisted of 4.66 clock hours, (250 minutes of instructional time, 20 minutes of non-instructional time, and a 10 minute imputed break, divided by 60). This method of calculating clock hours is impermissible under the regulations.

A "clock hour" is defined in 34 C.F.R. § 600.2 (1994) as a "period of time consisting of a 50 to 60 minute class, lecture, or recitation in a 60 minute period." This definition is further interpreted in the Federal Register, which provides in pertinent part:

To demonstrate the number of clock hours in an educational program, certain institutions have aggregated the number of minutes of instruction provided in that program, and have divided those minutes by 50. This practice is inconsistent with the

Secretary's long standing interpretation under the current definition of the term "clock hour." Under that interpretation, if an institution seeks to determine the number of clock hours in an educational program by aggregating the number of minutes in that program, it has to divide those minutes by 60 rather than 50. The revised definition of a clock hour requires that each clock hour of instruction takes place in a discrete 60-minute period.

58 Federal Register 39618, 39619

Under these mandates, the methods of calculation applied by Respondent and the Court are impermissible. Respondent violated the regulation when it divided the total number of minutes of instruction by 50 minutes, rather than 60 minutes. The Court's method contradicts the definition of a clock hour, which includes only time spent in class, lecture or recitation, in a discrete 60 minute period. Under this definition a clock hour may not include imputed non-instructional time. Clock hours are reflected by the total number of instructional minutes, occurring within discrete 60 minute periods. Therefore, the Court's method of totaling instructional minutes and non-instructional minutes is improper.

The Court's clock hour formula violates the plain meaning of this regulatory definition, contradicts the statements of the Secretary found in the Federal Register, and allows the institution to receive funding for large periods of time when instruction is not rendered. I am very concerned about institutions calculating clock hours in a manner inconsistent with the regulations with the purpose of receiving funding prematurely for instructional hours that are not actually earned. Institutions must carefully and closely adhere to the method of calculation reiterated in this decision. Therefore, IEU must recalculate its student awards for the 1994-95 award year, and the liability assessed in the FAD is upheld.⁵

D. The Court Properly Found that IEU Must Reimburse the Department \$2,300 for its Failure to Verify the Eligibility for a Student.

The Court heard and reviewed the evidence presented regarding student verification. IEU did not include any argument in its brief denying this allegation. Having no new evidence to consider on appeal, the Court's determination on this issue is affirmed, and IEU must reimburse the Department for the funds paid to a student without proper verification.

III. Conclusion

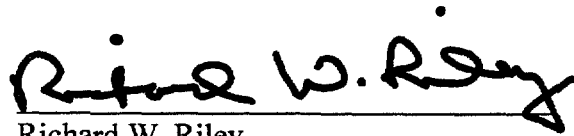
IEU must reimburse the Department \$756,864 for the maintenance of excess funds. IEU

⁵Although the OIG found this violation for the three award years under review, SFAP only assessed liabilities from the 1993-94 award year. Thus, the liabilities assessed by this tribunal only reflect violations from the 1993-94 award year.

must reimburse the Department \$62,532 in interest costs for late refunds for the 1992-93, 1993-94 award years, and \$655,554 in unpaid refunds for the 1994-95 award year. IEU must reimburse the Department \$1,284,900 for overstating the number of clock hours of instruction. IEU must reimburse the Department \$2,300 for its failure to verify the eligibility for student number 27. These violations committed by Respondent require immediate corrective action, including full repayment of the resulting costs sustained by the Department. Termination, however, is not warranted in light of the \$150,000 fine imposed, and the lack of evidence establishing Respondent's intentional wrongdoing. The violations in the instant case, although serious, do not illustrate Respondent's incapability to properly administer Title IV financial assistance programs in the future after the needed corrective measures are in place.

ORDER

It is hereby ordered that, in the manner prescribed by law, Respondent reimburse the United States Department of Education \$2,762,150, and pay a fine in the amount of \$150,000. The order terminating Respondent's eligibility to participate in the student financial assistance programs is hereby reversed.


Richard W. Riley

Washington, DC
October 28, 1997

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