



FINAL DECISION

DATE ..7-9-01.....

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

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In the Matter of

**Docket No. 00-07-SP**

**SOUTHEASTERN ACADEMY,**

Student Financial  
Assistance Proceeding

Respondent.

PRCN: 199910415875

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Appearances: David L. Peoples, President, and Elisabeth Apel, Esq., Vice-President for Legal Affairs, Southeastern Academy, Kissimmee, Florida, for Southeastern Academy.

Steven Z. Finley, Esq., and Renee S. Orleans, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

**DECISION**

Southeastern Academy (Southeastern) is a proprietary institution of higher education, which is located in Kissimmee, Florida. It offers a number of programs, including a 16-week Airline/International Travel Industry Program. The school is accredited by the Accrediting Commission of Career Schools and Colleges of Technology, and participates in the Federal Direct Loans, Supplemental Educational Opportunity Grant and the Pell Grant Programs, as authorized under the provisions of Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) administers and provides oversight for these programs.

Reviewers from SFAP's Institutional Participation and Oversight Service, Atlanta Region, conducted a program review at Southeastern between November 30 and December 4, 1998. The review examined Southeastern's compliance with HEA program regulations for the

award years 1996-1997 and 1997-1998. On November 29, 1999, after reviewing comments from Southeastern, SFAP issued a final program review determination (FPRD) finding that Southeastern violated a number of HEA regulations. By letter dated January 14, 2000, Southeastern, through its then counsel of record, appealed these findings. This appeal was assigned to Judge Frank K. Krueger, Jr. Upon Judge Krueger's retirement, however, it was reassigned to me for resolution. During the procedural course of this appeal, several findings were settled and withdrawn leaving only one finding still at issue. That finding is that \$43,493 in Title IV, HEA funds disbursed to 79 students in the Airline/ International Travel Industry Program was erroneous because the actual length of the program was less than the mandated minimum 24 quarter- hours. In order to prevail in this proceeding, Southeastern has the burden of proving that its Airline/International Travel Industry Program is an eligible program under the HEA. 34 C.F.R. § 668.116(d).

The facts relative to the issue before me appear clear and uncontested. The Florida State Board of Nonpublic Career Education approved Southeastern's Airline/International Travel Industry Program as being of 16 weeks in length and having 495 contact hours. This converts to 24-quarter credit hours, thereby satisfying the course-length requirement for the awarding of Federal Pell Grant and Supplemental Education Opportunity Grant funds. Although this program requirement exists, 79 students who had been disbursed federal student financial assistance were allowed to graduate and were awarded diplomas by Southeastern even though they had earned less than the minimum 24 credit hours. These 79 students amounted to about 10% of all the graduates of that program. In each of these cases, the student was enrolled in the requisite number of credits hours but, for various reasons, failed to pass some of those credits. Despite this fact, Southeastern's officials, relying on their established graduation policy, allowed them to graduate. The graduation requirements which are applicable to students who are enrolled in the Airline/International Travel Industry Program include (1) the attainment of a 60% grade average in each core course, (2) the maintenance of a 70% overall grade average, and (3) the exhibiting of a 25 word-per-minute typing proficiency. Apparently, SFAP did not find that this problem regarding course length extended to the school's other programs and there was no evidence or indication of any intent by Southeastern to circumvent the dictates of the HEA.

The parties' respective legal positions seem clear. On the one hand, SFAP argues that in order to be eligible for HEA funding, a program like the one at issue must be 24 quarter credits in length and, by allowing students to graduate with less credits, Southeastern has effectively failed to comply with that requirement. In essence, SFAP asserts that Southeastern's graduation policy results in a program, which does not require the completion of 24 quarter credits, therefore, it is not in compliance with the HEA. Southeastern, contrariwise, claims that the HEA only requires that it offer and require its students to take 24 quarter credits, not that they must satisfactorily complete those credits in order to have an eligible program. In addition, Southeastern points out that its graduation policy has remained the same since 1973. Further, it has been reviewed by the State-licensing agency, the accrediting agency, and by SFAP in previous program reviews; yet no one has ever challenged the graduation policy or claimed that it interfered with its programs

being certified as eligible for HEA funding. Southeastern, in essence, claims that SFAP's action is an attempt to control content of an educational program, which it is precluded from doing. 20 U.S.C. §1232a.

Strangely, SFAP's stated position in this case is, in some respects, inconsistent. On the one hand, it argues that Southeastern's graduation policy, in effect, renders the Airline/International Travel Industry Program ineligible for federal funding because of the inadequate length of that program. Despite that claim, it only seeks to recover the federal funds that were disbursed to those students who did not successfully complete the total hours. SFAP, thereby appears to treat this situation as one which involves the eligibility of students and not the eligibility of the program. This dichotomy leads one to conclude that SFAP appears concerned about Southeastern's operations from the accrediting and licensing standpoints and not from the aspect of the mispending of federal student financial assistance. In fact, Southeastern posits, as a defense to SFAP's claim, that it would have no liability if this issue were treated as one involving the refund of federal student aid. We are all aware that if an eligible student enrolls in an eligible program, federal funds are disbursed. If the student drops out prior to completion of that program, however, a set of formulae is applied to determine how much of those funds must be returned to the federal treasury. Under the facts of this case, it is clear that no federal funds would be returnable. Therefore, Southeastern analogizes that no liability should result in this case. SFAP's argument that such an analogy is inappropriate because the refund rules only apply in situations where a student drops out before completion of his/her program, and not to the current situation because the students here completed all their classes, is inexplicable.

What appears quite clear is that: the students at issue enrolled in and took the requisite number of credits; they timely received the appropriate federal funds; and although they were not successful as to a small number of credits, they were able to graduate under Southeastern's graduation policy. If SFAP's concern is that these students should not have been allowed to graduate unless they were successful in all their courses, that concern is misplaced because the appropriate independent agencies that have jurisdiction over such a matter are the state licensing agency and the accrediting agency. Any attempt by SFAP to interject itself into that question by equating this situation with one where an institution does not offer the requisite instruction is improper.

From the federal financial aid perspective, it is absolutely clear that students earn such financial aid by enrolling in and completing a certain portion of coursework. If a student drops out after completion of that portion of the coursework, there should be no effect on such federal aid. I have been unable to locate, and SFAP has not cited to me, any regulation requiring that a student must "complete" courses in order for the program itself to be eligible for HEA funding. SFAP, by interpreting the failure to complete certain coursework into making the program ineligible, appears to be attempting to regulate by adjudication and well outside of the normal rulemaking process. Consequently, since the Airline/International Travel Industry Program is of the required length and is, otherwise, in compliance with the HEA, it is an eligible program as

envisioned in 34 C.F.R. § 668.8(d).

FINDINGS

Southeastern Academy has met its burden of proving that its Airline/International Travel Industry Program is an eligible program for federal student financial assistance purposes. As a consequence, I FIND that the \$43,493.00, which was awarded to the 79 students at issue, was not erroneously disbursed.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Southeastern Academy be relieved of any obligation to pay to the United States Department of Education the sum of \$43,493, as demanded in the FPRD.

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Ernest C. Canellos  
Chief Judge

Dated: June 15, 2001