



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL
KANSAS CITY OFFICE



8930 Ward Parkway, Suite 2401
Kansas City, Missouri 64114-3302

AUDIT SERVICES

Telephone (816) 268-0500

INVESTIGATION SERVICES

FAX (816) 823-1398

FAX (816) 268-0526

May 20, 2004

Richard Hoffman, Director
Kaw Area Technical School
5724 SW Huntoon
Topeka, KS 66604-2199

Dear Mr. Hoffman:

This Final Audit Report (Control Number ED-OIG/A07-D0026) presents the results of our audit of Kaw Area Technical School (KATS). Our objective was to determine if KATS was in compliance with the requirement that, to be eligible to participate in the Title IV Student Financial Assistance programs, postsecondary vocational institutions must admit as regular students only individuals who have a high school certificate or its equivalent or are beyond the age of compulsory school attendance. This requirement is defined in sections 101(a)(1) and 102(c)(2) of the Higher Education Act of 1965, as amended (HEA).

AUDIT RESULTS

We found that KATS is not eligible to participate in the Title IV student aid programs because it is not in compliance with the requirement set out in sections 101(a)(1) and 102(c)(2) of the HEA. In addition, KATS may not have been eligible to participate in these programs since at least 1997, when, KATS officials informed us, the age of compulsory school attendance was changed from 16 to 18 in Kansas.

Under sections 101(a)(1) and 102(c)(1)(B) of the HEA, in order to participate in the Title IV programs a "postsecondary vocational institution" must, among other requirements, admit "as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate" Section 102(c)(2) further provides that the "term 'postsecondary vocational institution' also includes an educational institution in any State that, in lieu of the requirement of paragraph (1) of section 101(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located."

At 34 C.F.R. § 600.2, a “regular student” is defined as a “person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.”

Based on discussions with KATS officials and a review of hard-copy student files, we found that during our audit period, Academic Year (AY) 2002-03, KATS enrolled high school students who were not above 18 years-of-age as regular students. Postsecondary students and high school students under the age of compulsory school attendance were enrolled in the same programs, received the same instruction from the same instructors, and received the same diplomas certifying program completion. High school students represented 46 percent of the students enrolled at KATS.

In response to our finding, KATS officials told us that they did not know that their enrollment of high school students under the age of 18 was a violation of Title IV institutional eligibility requirements. They said that the school continues to enroll such students, as do other area technical schools in Kansas.

Recommendations:

We recommend that the Chief Operating Officer for Federal Student Aid (FSA)

1. Take immediate action under 34 C.F.R. § 600.41 to terminate KATS’ participation in the Title IV programs as a result of it not being an eligible institution;
2. Review KATS’ enrollment practices prior to AY 2002-03 to identify those periods in which it was not in compliance with the Title IV institutional eligibility provisions discussed in this report; and
3. Require KATS to return the amount of Title IV aid distributed to its students during AY 2002-03 (\$882,445), as well as the amount of such aid distributed during those periods in which it was not in compliance with the Title IV institutional eligibility provisions. For AY 2002-03, \$374,040 in Federal Pell grants should be returned to the Department and \$508,405 in Federal Family Education Loans (FFEL) to the appropriate lenders on behalf of the borrowers.

AUDITEE COMMENTS AND OIG RESPONSE

KATS disagreed with the finding and all of the recommendations of the draft audit report. Its comments on the report (full text enclosed) specifically addressed both the finding and the recommendations. The following is a summary of KATS' comments and our response to the comments. It is organized in the same order and under the same headers as the KATS response.

KATS is eligible to participate in Title IV programs because KATS is an alternative educational program, as defined by Kansas law.

KATS acknowledged that the age of compulsory school attendance in Kansas is 18 years-of-age, but notes that there is an exemption to this requirement that states that a child who is 16 or 17 years-of-age is exempt from the general compulsory education requirement if “the child is regularly enrolled in a program recognized by the local board of education as an approved alternative educational program.”

Although Kansas law does not define “alternative educational program,” KATS states that it qualifies as an alternative educational program for several reasons:

- KATS has had a Vocational Education Agreement with each of the school districts participating in its programs since before 1993.
- This agreement establishes “a concrete and defined relationship” between KATS and the participating school districts, which includes
 - a. An agreement to cooperate in the maintenance and administration of KATS programs, and
 - b. Contribution of funds to pay for operations at KATS.
- KATS provides programs that are different from the educational program of each school.

OIG Response

The arguments and documents presented did not convince us that KATS in fact qualified as an “alternative educational program” under the Kansas compulsory education statute. The Kansas statute exempts 16- and 17-year olds from attendance at the local public school if the students are enrolled in an approved alternative program. However, as

acknowledged in KATS' response, these students remain enrolled in their local public school, and take courses both at KATS and the local public school. The KATS programs count toward the student's required number of credits for graduation at the high school the student is attending, not as an alternative to earning a high school diploma. Therefore, we concluded that the KATS program is an integral part of the students' high school education and not an alternative to high school.

The Vocational Education Agreements provided by KATS with its response also do not indicate that the programs offered qualify as alternative programs. KATS did not provide any legislative history or other independent support for its position that its programs qualify as an alternative program under the compulsory education statute.

In its response, KATS also presented no evidence to alter our conclusion that the high school students were admitted as "regular students." Without conceding the issue, KATS assumed for the sake of discussion that they were admitted as regular students.

KATS is eligible to participate in Title IV programs because the 17 participating school districts are taking additional steps to solidify KATS' current status as an alternative education program, as defined by Kansas law.

KATS stated that, as of March 11, 2004, 9 of its 17 participating school districts had approved a resolution recognizing KATS as an alternative educational program effective July 1, 1997 and that the remaining 8 districts are expected to do likewise at upcoming meetings. It points out that these resolutions are a formality but that it wants to ensure that all bases are covered and that its existing status as an alternative educational program is "fortified."

OIG Response

Our review of the above comments did not change our position. The copies of the above-stated resolutions by local school boards (included with the attachment to this report) were signed between February 19 and March 8, 2004. Retroactive approval would not alter our conclusion. Institutions must be eligible to participate in the Title IV programs at the time Title IV funds are received.

KATS is eligible to participate in Title IV programs because the Kansas compulsory school attendance statute has been amended to include a specific exemption for children enrolled in a postsecondary educational institution.

KATS stated that the Kansas House of Representatives had approved an amendment that states a child who is 16- or 17-years-old is exempt from compulsory attendance requirements if “the child is concurrently enrolled in a postsecondary educational institution,” which refers to area vocational schools such as KATS as well as universities and colleges. The proposed amendment would be “applicable to children from and after July 1, 1997.” As of the date of KATS response, the proposal had not been passed by the Kansas Senate.

OIG Response

Because the amendment has not been enacted, it provides no basis to alter our conclusion.

Even if KATS is found to have violated Sections 101 (a)(1) and 102 (c)(2) of the Higher Education Act, the Draft Audit Report does not justify the excessive sanctions that it recommends.

KATS commented that the recommendations of the draft audit report are not supported by legal authority or other justification. It cites the U.S. General Accounting Office’s (GAO) Government Auditing Standards in stating that audit recommendations should “logically flow from the findings and conclusions and need to state clearly the actions to be taken.” The recommendations are most constructive when they are “directed at resolving the cause of identified problems, action oriented and specific, addressed to parties that have the authority to act, practical and, to the extent feasible, cost effective and measurable.”

KATS noted that since it did not distribute Title IV funds to ineligible students there was no harm to the federal interest and the funds were used for their “lawful intended purposes.” It stated that the draft audit report provides “no basis for recommending that KATS lose its institutional eligibility or return its Title IV funding.”

OIG Response

Our review of the above comments did not change our position. In order to lawfully distribute Title IV funds to a student, the student must be eligible, he or she must be

enrolled in an eligible program, and the institution distributing the funds must be eligible to participate in the Title IV programs. Congress set requirements for the types of institutions it intended to participate in these programs. By virtue of KATS' failure to satisfy one of these requirements, it was not such an institution and its students should not have received Title IV aid. KATS distributed federal funds that were not lawfully its to distribute. The recommendations in our report lawfully, logically, and reasonably flow from KATS' noncompliance. The legal citations we offer in the report justify our finding and our recommendations flow from the finding. From the federal perspective, the recommendations satisfy the GAO Government Auditing Standards. They are "action oriented and specific" and are directed to the Department's Chief Operating Officer for Federal Student Aid, who is the party with the authority to act.

Even if KATS is found to have violated Sections 101(a)(1) and 102(c)(2) of the Higher Education Act, and even if the appropriate remedy is determined to be return of Title IV funds, the amount should be lower because: (1) the Draft Audit Report did not accurately identify the amount of Title IV funds disbursed in AY 2002-03, and (2) the Draft Audit Report did not use the actual loss formula in recommending an amount to be returned.

KATS commented that the draft audit report overstates the amount of Title IV funds disbursed to its students during our audit period, AY 2002-03. It noted that its records show that \$720,168 in Pell grants and FFEL loans were disbursed in that year, as opposed to the \$882,445 cited in the report. KATS also pointed out that the report did not take into account Department policies that require the application of an actual loss formula. It noted that, if the formula is not used, there would be a windfall to the federal government due to payment by KATS and subsequent collection from borrowers on the same loans.

OIG Response

Our review of the above comments did not change our position. The difference between the KATS total Title IV disbursement figure and the one cited in our draft audit report is due to a difference in the FFEL disbursement figure KATS cited (\$346,128) and the figure in our report (\$508,405). Our figure was drawn from the National Student Loan Data System (NSLDS), and KATS stated that its figure was from school records. KATS provided no evidence for us to conclude that FFEL disbursements were in fact less than those recorded in NSLDS. KATS can present additional evidence on the disbursement amounts during audit resolution. Use of the actual loss formula to resolve questioned costs is at the discretion of the Department and is appropriately handled during the audit resolution process. The details of any repayment instructions will insure that there is no

duplicative recovery. We did modify Recommendation 3 to clarify that FFEL funds should be returned to the lender.

BACKGROUND

KATS is one of 11 area technical schools in Kansas that were established pursuant to state law enacted in 1963. The Council on Occupational Education is the school's accrediting agency. In addition to serving postsecondary students, KATS serves high school students from 17 school districts in and around the city of Topeka.

Administratively, it is part of Topeka Public Schools, Unified School District No. 501, and is under the oversight and coordination of the Kansas Board of Regents. KATS identifies its mission as offering "educational opportunities to high school, business/industry and adult students by providing quality technical training to meet individual and labor market needs."

The KATS Internet site notes that it offers over 30 diploma programs. In AY 2002-03, KATS enrolled 1,124 individuals in these programs, 517 of which were high school students. Students who enroll at KATS at the beginning of their junior year of high school are able to graduate with a KATS diploma at the end of their senior year in high school. High school counseling staff stated that KATS courses taken by high school students count as electives towards high school graduation requirements. During AY 2002-03, KATS students received \$882,445 in Title IV financial aid (\$374,040 in Pell grants and \$508,405 in Federal Family Education Loan disbursements).

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if KATS was in compliance with the requirement that postsecondary vocational institutions must admit as regular students only individuals who have a high school certificate or its equivalent or are beyond the age of compulsory school attendance in order to be eligible to participate in Title IV Student Financial Assistance programs.

To accomplish our objective, we

- Reviewed applicable sections of the HEA and regulations;
- Reviewed state law regarding the age of compulsory school attendance;
- Reviewed hard-copy student files;
- Reviewed print-outs from the KATS electronic student information system;

- Reviewed KATS policy and procedure documents; and
- Interviewed KATS managers and staff.

For our review of student files, we randomly selected 52 files from 3 programs, which, we had been informed, were popular, or fully enrolled (Automotive Technology, Collision Repair, and Electricity, Heating, and Air Conditioning). We tested the accuracy, authenticity, and completeness of the data in the school's electronic student information system by comparing them to source records in the 52 hard-copy student files we had selected. We concluded that the data contained in these systems were sufficiently reliable to be used in meeting the audit's objective.

We performed on-site fieldwork at KATS offices from September 29 through October 2, 2003, on which day we held a field exit conference. We conducted additional review and analyses of the materials we had obtained in our Kansas City office from October 6 through 30, 2003, and held the final exit conference on November 6, 2003. We conducted the audit in accordance with generally accepted government auditing standards appropriate to the scope of the audit described above.

STATEMENT ON MANAGEMENT CONTROLS

We did not assess KATS' management control structure applicable to its participation in Title IV programs because it was not necessary to achieve our objective.

ADMINISTRATIVE MATTERS

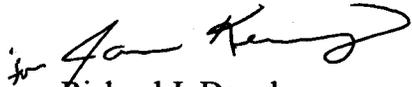
If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Department of Education official, who will consider them before taking final Departmental action on the audit:

Theresa S. Shaw
Chief Operating Officer
Federal Student Aid
U.S. Department of Education
Union Center Plaza, Room 112G1
830 First Street, NE
Washington, DC 20202

It is the policy of the U.S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be greatly appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,


Richard J. Dowd
Regional Inspector General
for Audit

Enclosure



5724 SW Huntoon St.

Topeka, KS 66604-2199

Ph: 785-273-7140

1-877-588-7140

Fax: 785-273-7080

<http://www.kats.tec.ks.us/>

March 12, 2004

VIA FACSIMILE – HARD COPY TO FOLLOW

MAR 15 2004

William Allen
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
Kansas City Office
8930 Ward Parkway, Suite 2401
Kansas City, Missouri 64114

**Re: Office of Inspector General Draft Audit Report
Audit Control Number ED-OIG/A07-D0026**

Dear Mr. Allen:

This letter presents Kaw Area Technical School's (hereafter, "KATS") preliminary comments in response to the January 23, 2004 Draft Audit Report issued by the United States Department of Education (hereafter, the "Department," or "ED"). In a letter dated February 20, 2004, KATS requested from ED an extension for submitting this response. On February 23, 2004, via electronic mail, ED granted an extension until March 12, 2004.

Per your electronic communication dated March 10, 2004, this letter is being transmitted via facsimile and a hard copy, which will include all attachments, will be sent to you via regular mail.

The Draft Audit Report contains one finding focusing on whether KATS is eligible to participate in the federal Student Financial Aid (hereafter, "Title IV") program. The finding erroneously claims that KATS is ineligible to participate in the Federal Title IV student financial aid programs because it fails to meet the definition of an eligible institution as set forth in sections 101(a)(1) and 102(c)(2) of the Higher Education Act (HEA). Draft Audit Report, p. 1. These sections define an eligible institution of this type as a postsecondary vocational institution that admits only high school graduates, or individuals with high school equivalency certificates, as regular students. Alternatively, an eligible institution of this type may also be a postsecondary vocational institution that admits as regular students only persons beyond the age of compulsory education, according to the laws of the state in which the school is located.

The Draft Audit Report erroneously concludes that KATS fails to meet the definition of eligible institution and is therefore ineligible for participation in the Title IV

programs because it allegedly enrolled as regular students high school students who were under the age of compulsory education in Kansas. Draft Audit Report, p. 2. Based on this conclusion, the Draft Audit Report recommends that the Chief Operating Officer for Federal Student Aid: (1) terminate KATS' participation in the Title IV programs as a result of it not being an eligible institution; (2) review KATS' enrollment practices prior to Academic Year ("AY") 2002-03 to identify periods in which it was not in compliance with Title IV eligibility provisions discussed in the Draft Audit Report; and (3) require that KATS return the amount of Title IV aid distributed to its students during AY 2002-03 (\$882,445), as well as the amount of such aid distributed during those periods in which it was allegedly not in compliance with the Title IV institutional eligibility provisions. Draft Audit Report, p. 2.

KATS disagrees with the findings contained in the Draft Audit Report and the Office of Inspector General's (hereafter, "OIG") recommendations, for the reasons set forth herein.

I. BACKGROUND

KATS is a vocational school in Topeka, Kansas that serves students from 17 school districts in and around the city of Topeka, Kansas – Kaw Valley, North Jackson, Holton, Royal Valley, Valley Falls, Jefferson County North, Jefferson County West, Oskaloosa, McLouth, Perry, Seaman, Silver Lake, Santa Fe Trail, Auburn Washburn, Shawnee Heights, Burlingame, and Topeka. KATS has participated in Vocational Education Agreements with these districts since before 1993 (see attachments).¹ The first attached agreement ran from 1993-1998, the second ran from 1997-2000, and the current agreement was executed in 2000 and runs through 2005.

The majority of KATS' regular students are high school graduates, over 18 years old, or both. A "regular student" is a "person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution." 34 CFR § 600.2 (2004). KATS also admits juniors and seniors in high school who may be either 16- or 17-years-old. Of the 440 high school students admitted by KATS, between 250 and 300 are under age 18. These are the students that have given rise to this audit. The high school students take classes both at KATS and at their respective high schools. If a student enrolls in KATS during his or her junior year of high school, upon successful completion of the curriculum, he or she will graduate with both a KATS diploma and a high school diploma at the end of his or her senior year in high school.

KATS does not distribute Title IV aid to any student below age 18.² All of the Title IV funds distributed by KATS were received by regular students who were age 18

¹ KATS participated in Vocational Education Agreements with area school districts prior to 1993. Although KATS is only submitting evidence of Vocational Education Agreements going back to 1993, KATS asserts that it participated in such agreements for many years prior to 1993.

² At a hearing held by the U.S. Senate's Health, Education, Labor and Pensions Committee on March 4, 2004, the issue of extending individual eligibility for Pell grants to concurrently enrolled high school

and older and met the definition of "eligible student" for Title IV purposes. *See* 34 CFR § 668.32.

During Academic Year 2002-03, KATS distributed \$720,168, as opposed to the \$888,445 figure cited by ED, in Title IV funds to eligible students. Of that total, \$374,040 represented Pell grants and \$346,128 represented Federal Family Education Loan Programs (FFELP) loans.

II. FINDING – INSTITUTIONAL ELIGIBILITY TO PARTICIPATE IN TITLE IV PROGRAMS

The issues raised by the Draft Audit Report are: (1) whether KATS admitted as regular students individuals below the age of compulsory education in Kansas; (2) if KATS did admit as regular students individuals below the age of compulsory education, whether doing so creates institutional ineligibility for KATS; and (3) even if a technical violation of institutional eligibility has occurred, whether the punitive and far reaching sanctions of the Draft Audit Report represent a reasoned response to a situation where aid was only distributed to eligible students in programs that meet the eligibility requirements. *See* 34 CFR §§ 600.4, 600.6, 600.7.

A. KATS is eligible to participate in Title IV programs because KATS is an alternative educational program, as defined by Kansas law.

The Draft Audit Report relies on the allegation that KATS admits as regular students persons who are below the age of compulsory education in Kansas. Draft Audit Report, p. 1-2. Kansas state law determines the age of compulsory education. For the purposes of this discussion, we will assume that the students were admitted as regular students. However, we are not conceding that they were, in fact, admitted as regular students.

The general compulsory education requirement under Kansas law, subject to other statutory provisions, is that "every parent or person acting as parent in the state of Kansas, who has control over or charge of any child who has reached the age of seven years and is under the age of 18 years and has not attained a high school diploma or a general educational development (GED) credential, shall require such child to continuously attend each school year ..." a public, private, denominational, or parochial school. K.S.A. § 72-1111(a) (2003).

However, the statute includes an important exemption that is applicable to KATS. If a child is 16 or 17 years of age, "the child shall be exempt from the compulsory attendance requirements of this section if (1) the child is regularly enrolled in a program recognized by the local board of education as an approved alternative educational

students was discussed. The witnesses uniformly rejected this idea, insisting that expanding Pell eligibility in this manner would dilute the overall Pell grant program and harm other students. KATS has no plans to seek or support Pell grants for concurrently enrolled secondary students.

program” K.S.A. § 72-1111(b)(1) (2003). However, Kansas law does not define “alternative educational program.”

KATS is currently in a Vocational Education Agreement (“Agreement”) with 17 participating school districts. *See* K.S.A. § 72-4421 (2003). KATS has been a participant in such agreements since before 1993, and its current agreement runs through 2005. The Agreement establishes KATS as an approved area vocational school for the participating school districts. *See id.* at § 72-4412.

KATS is an alternative educational program for the 17 participating school districts under the Agreement, and has been since before 1993. The Agreement establishes a concrete and defined relationship between KATS and the 17 participating school districts. According to the Agreement, the 17 participating school districts agree to “participate and cooperate in the establishment, conduct, maintenance, and administration of vocational education courses or programs at KATS facilities” The Agreement also requires that KATS maintain an Advisory Council, comprised of the superintendents from the 17 participating school districts. Each participating school district is required to contribute funds to a single Area Vocational Fund, which is used to pay for operations at KATS, and may also pay for tuition for a course or program not offered by one of the participating school districts. Finally, positions in classes at KATS are allocated to each participating school district in proportion to its payment to the Area Vocational Fund.

The current Agreement was approved by the board of education from each of the 17 participating school districts, and was approved by the Kansas State Board of Regents on November 15, 2000.

KATS became an alternative educational program before 1993, and it has been an alternative educational program continuously up to this date. The districts send students to KATS who they determine would benefit from KATS’ vocational education program, which is generally not otherwise offered by the districts themselves. As a result, the students maintain concurrent enrollment at their respective high schools and at KATS, which enables the students to receive both a high school diploma and a KATS degree upon successful completion of each curriculum.

Because KATS is providing a service not otherwise available to students within the 17 participating school districts, and because the students are enrolled in a program different from the normal educational program within each district, KATS is an alternative educational program. In addition, in order for the Agreement to be effective, each participating district’s school board had to approve it in writing, as did the Kansas State Board of Regents. As a result, KATS is an alternative educational program under the Vocational Education Agreement.

The state rules pertaining to compulsory school attendance control in this situation. The Kansas legislature carved out an exemption to the compulsory school attendance statute, saying that a 16- or 17-year-old child who is regularly enrolled in an

alternative educational program is exempt from the state's compulsory school attendance requirements. Because KATS has been an alternative educational program for the 17 participating school districts since before 1993, its students below age 18 are exempt from the Kansas compulsory school attendance statute, and therefore legally beyond the age of compulsory education. Therefore, KATS only admits students who are beyond the age of compulsory education, either by chronological age or statutory exemption, and is eligible to participate in Title IV programs.

B. KATS is eligible to participate in Title IV programs because the 17 participating school districts are taking additional steps to solidify KATS' current status as an alternative education program, as defined by Kansas law.

KATS maintains that, based on the Vocational Education Agreement, it is an alternative educational program under Kansas law, and therefore eligible to participate in Title IV programs because its 16- and 17-year-old concurrently enrolled students are exempt from the Kansas compulsory school attendance requirements. However, to ensure that all bases are covered, the 17 participating school districts are currently in the process of passing additional resolutions, separate from the Vocational Education Agreement, that approve KATS as an alternative educational program. This is a mere formality. When all of the 17 participating school boards pass these resolutions, the relationship between KATS and the districts, and the programs offered to the districts' students, will be no different. KATS will continue to be an alternative educational program, just as it had been under the Vocational Education Agreement alone.

As of March 11, 2004, nine out of 17 school boards approved a resolution recognizing KATS as an alternative educational program effective July 1, 1997. Copies of each approved resolution are attached to this letter. A tenth school board – the Board of Education of Jefferson County West – will approve the resolution on April 1, 2004. We expect that the remaining seven school boards will approve the resolution. These seven school boards have meetings scheduled and the resolution is listed as an agenda item for each meeting. It is expected that all of the remaining school boards will approve the resolution at their upcoming meetings.

Again, this process is a mere formality because KATS has been as an alternative educational program since before 1993. KATS already satisfies the relevant exemption to the Kansas compulsory education statute. By passing these resolutions, the 17 participating school boards are merely creating additional documentation to fortify KATS' existing status as an alternative educational program. By satisfying the statutory exemption, KATS' 16- and 17-year-old students are legally beyond the age of compulsory education in Kansas. Consequently, KATS only admits students who are beyond the age of compulsory education in Kansas, either by chronological age or by statutory exemption. Therefore, the audit finding is incorrect and KATS is eligible to participate in the Title IV programs.

C. KATS is eligible to participate in Title IV programs because the Kansas compulsory school attendance statute has been amended to include a specific exemption for children enrolled in a postsecondary educational institution.

As of the date of this letter, the Kansas legislature is in the process of approving an amendment to the compulsory school attendance statute. The amendment passed the Kansas House of Representatives unanimously, 125-0. On March 9, 2004, the Kansas Senate Education Committee held a hearing to examine the amendment to the compulsory school attendance statute. It is expected that the amendment will pass the Kansas Senate.

This amendment creates an additional exemption to the requirements pertaining to the age of compulsory education. When passed, K.S.A. § 72-1111(b)(3) shall state that a child who is 16 or 17 years old shall be exempt from compulsory attendance requirements if “the child is concurrently enrolled in a postsecondary educational institution” as defined by Kansas law. This exemption is “applicable to children from and after July 1, 1997 and shall relate back to such date.” *Id.*

Under Kansas law, a postsecondary educational institution is defined as “any public university, municipal university, community college, technical college and vocational education school, and includes any entity resulting from the consolidation or affiliation of any two or more of such postsecondary educational institutions.” K.S.A. § 74-3201b(h) (2003). Kansas defines “vocational education school” as “any area vocational school or area vocational-technical school established under the laws of” Kansas. *Id.* at § 74-3201b(f).

KATS is an approved area vocational school under Kansas law (see attached Vocational Education Agreement and course catalog), and therefore satisfies the Kansas definition of “vocational education school.” As such, it meets the definition of a postsecondary educational institution under Kansas law. This means that any 16- or 17-year-old who is enrolled at KATS is exempt from the compulsory school attendance requirements. The KATS students who are below age 18 and regularly enrolled in a diploma program are all either 16- or 17-years-old. By satisfying this statutory exemption, these students are legally beyond the age of compulsory education. As a result, KATS only admits students who are beyond the age of compulsory education in Kansas, either by chronological age or by statutory exemption. Therefore, the audit finding is incorrect and KATS is eligible to participate in the Title IV programs.

D. Even if KATS is found to have violated Sections 101(a)(1) and 102(c)(2) of the Higher Education Act, the Draft Audit Report does not justify the excessive sanctions that it recommends.

The Draft Audit Report recommends that the Chief Operating Officer for Federal Student Aid: (1) terminate KATS’ participation in the Title IV programs for not being an eligible institution; (2) review KATS’ enrollment practices prior to AY 2002-03 to identify periods during which KATS was not in compliance with Title IV institutional

eligibility provisions; and (3) require KATS to return the amount of Title IV aid distributed to students during AY 2002-03, as well as any aid distributed during periods of time in which KATS is determined to not be in compliance. Draft Audit Report, p. 2.

The Draft Audit Report offers no legal authority or other justification to explain why termination of eligibility and a return of Title IV funds would lawfully, logically, or reasonably result from the cited noncompliance. Recommendations should “logically flow from the findings and conclusions and need to state clearly the actions to be taken.” U.S. General Accounting Office, Government Auditing Standards, p. 170 (June 2003). Recommendations are most constructive when they are “directed at resolving the cause of identified problems, action oriented and specific, addressed to parties that have the authority to act, practical and, to the extent feasible, cost effective and measurable.” *Id.*

KATS did not provide any Title IV aid to students below age 18. Therefore, all of the Title IV funds distributed by KATS were received by students who met the federal student eligibility requirements. *See* 34 CFR § 668.32. As a result, there was no harm to the federal interest whatsoever. The same students would have received the same Title IV funds had KATS not admitted students below age 18. The funds in question were utilized for their lawful intended purposes, and the Draft Audit Report offers no legal authority or other justification to explain why disallowance of all Title IV funding would lawfully, logically, or reasonably result from the alleged noncompliance. Nowhere does the Draft Audit Report even allege that the purported violations ever resulted in the provision of Title IV funds to ineligible students. The Draft Audit Report is devoid of any factual allegations of actual harm, and it asserts no basis for recommending that KATS lose its institutional eligibility or return its Title IV funding.

KATS disagrees with the recommendations of the Draft Audit Report. KATS does not believe that the recommended liability is appropriate in this situation. Rather, KATS is of the opinion that the recommended liability is unnecessarily excessive. Therefore, KATS should not be subject to a termination of eligibility or a return of Title IV funds.

E. Even if KATS is found to have violated Sections 101(a)(1) and 102(c)(2) of the Higher Education Act, and even if the appropriate remedy is determined to be return of Title IV funds, the amount should be lower because: (1) the Draft Audit Report did not accurately identify the amount of Title IV funds disbursed in AY 2002-03, and (2) the Draft Audit Report did not use the actual loss formula in recommending an amount to be returned.

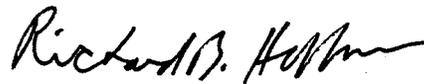
As further evidence that the recommended sanctions are arbitrary and capricious, the Draft Audit Report incorrectly and drastically overstates the amount of purported liabilities arising out of KATS' participation in Title IV programs by erroneously recommending that the KATS be required to return a sum totaling \$882,445, which purportedly represents all disbursed Title IV funding in AY 2002-03.

First, KATS disputes the Draft Audit Report's determination regarding the total amount of Title IV funds distributed to students in AY 2002-03. According to KATS' records, the school distributed a total of \$720,168 in Title IV funds during AY 2002-03. The Draft Audit Report does not include any documentation to support its contention that \$882,445 in Title IV funds were actually distributed in AY 2002-03, and it is not clear from the text of the Draft Audit Report how this figure was determined. Therefore, KATS maintains that the sum of \$882,445 does not accurately reflect the school's Title IV distributions, and therefore KATS should not be required to return that amount.

Second, the Draft Audit Report inexplicably ignores established rules limiting the scope and quantity of any audit disallowances to the Department's actual losses. KATS' cohort default rate is only 10%. This means that 90% of KATS' students are expected to repay their loans. Yet, the Draft Audit Report recommends that KATS return all Title IV funds, a sum that includes both grants and loans. Of the \$720,168 in Title IV funds distributed during AY 2002-03, \$374,040 were Pell grants and \$346,128 were FFEL loans. It is expected that students will repay their loans over time. If the students repay their loans as expected, and KATS is required to return all of its Title IV funds, the federal government will receive payment of the \$346,128 in FFEL loans when it has suffered a loss resulting from defaults and other costs far less than this amount. This amounts to a windfall for the federal government. To avoid such a windfall, the Department's established policies require the application of an actual loss formula. The actual loss formula prevents a windfall from occurring because, rather than requiring a refund of all loan amounts, it takes into account institutional default rates. Essentially, the actual loss formula uses a school's default rate to predict how many students in a given academic year will default on their loans, and uses that figure to identify an actual loss to the federal government. That actual loss is a more accurate approximation of the amount that should be repaid to the federal government, and prevents the federal government from receiving repayment of the same loan twice. In recommending repurchase of the face amount of these loans, the Audit Report ignores the Department's established actual loss formula. Therefore, if it is determined that violations have occurred, and the appropriate remedy is found to be a return of Title IV funds, the amount actually returned must be significantly less than the amount identified in the Draft Audit Report because of the required use of the actual loss formula.

We appreciate your review and consideration of this response to the OIG's Draft Audit Report, and KATS reserves the right and opportunity to submit additional comments.

Respectfully submitted,



Richard Hoffman, General Director

Attachments