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

In the Matter of

TEDDY ULMO INSTITUTE,

Respondent.

Docket No. 03-42-SF

Federal Student
Aid Proceeding

Appearances: Dion Padin, Chief Financial Officer, Teddy Ulmo Institute, San Juan, PR, for Respondent.

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard I. Slippen, Administrative Judge

DECISION

Teddy Ulmo Institute (Teddy Ulmo) operated as a proprietary institution of higher education. Until its closure in 2003, the school participated in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq*. and 42 U.S.C. § 2752 *et seq*. On April 18, 2003, the U.S. Department of Education's (Department), Office of Federal Student Aid (FSA), issued a combined emergency action and termination/fine action (Notice).[1] In the April 18, 2003, Notice, FSA assessed a fine of **$1,009,000**, based on 12 allegations of misconduct and breach of fiduciary duty.[2]

[1] Due to Teddy Ulmo's closure, the emergency and termination actions were rendered moot, as stated in the tribunal's May 20, 2003, order. Only the fine action is before the tribunal.

[2] In an addendum to its brief, FSA requests an evidentiary hearing, which Respondent did not oppose. In accordance with the tribunal's authority to regulate the course of the proceedings pursuant to 34 C.F.R. § 668.89, FSA's request is denied. FSA submitted over 200 exhibits, many of which contain multiple pages of evidence. Respondent also submitted voluminous exhibits. Notwithstanding the volume of documentary evidence, FSA argues that witness testimony could

Assessing the Amount of Fines in Subpart G Proceedings

Before discussing the 12 findings identified in the Notice, it is important to discuss the bases for deciding how much to fine a school for a proven violation of the rules governing the administration of the Title IV, HEA Programs. Section 487(c)(2)(B) of the HEA, 20 U.S.C. § 1094(c)(2)(B), gives the Department the authority to fine an institution up to a maximum of $27,500 for each violation of an applicable statute or regulation.[3] The purpose of a fine is to punish the school for its misconduct and to deter that school, as well as other schools similarly situated, from committing similar violations in the future.

In determining the size of the fine, the Secretary is required to consider the gravity of the violations and the size of the institution subject to the fine.[4] Fraudulent conduct is considered a severe breach of a school's fiduciary duty, and in cases involving fraudulent conduct, the Secretary has ruled that a maximum allowable fine is an appropriate punishment, and also serves as a deterrent to others in committing similar violations.[5] The amount of loss suffered by the Department as a result of the school's violations has also been used to guide this tribunal's assessment of a fine.[6]

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aid the tribunal's fact-finding in this case. After a careful review of the evidence and an assessment of the allegations and arguments for which the evidence was submitted, testimony as to the same facts would be duplicative of the evidence already before the tribunal. Therefore, the tribunal finds that an evidentiary hearing is unnecessary to illuminate the findings at issue in this proceeding. Accordingly, FSA's request is denied.

[3] The maximum fine at issue in this proceeding is $27,500. The maximum fine per violation was raised from $25,000 to $27,500 in 2003. *See* 34 C.F.R. § 668.84(a) (2003) and Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. 20 U.S.C. § 2461 note.

[4] *See In re Puerto Rico Technology and Beauty College, and Lamec, Inc.*, Docket Nos. 90-34-ST, 90-38-ST, U.S. Dep't of Educ. (Decision of the Secretary on Remand) (June 11, 1993) (The Secretary issued a joint opinion in these two cases.) and *In re Bnai Arugath Habosem*, Docket No. 92-131-ST, U.S. Dep't of Educ. (Decision of the Secretary) (August 24, 1993). (Bnai) ("Continuing violations of the same regulatory prohibition should not be considered a single violation, but multiple violations of the same prohibition. Any other conclusion would result in an institution having no incentive to correct existing violations.")

[5] *See In re North Carolina Academy of Cosmetic Art*, Docket Nos. 98-123-EA and 98-129-ST, U.S. Dep't of Educ. (Decision of the Secretary) (December 12, 2000).

[6] *See In re Hollywood School of Beauty Culture & Advanced Hair Design*, Docket No. 98-37-SF, U.S. Dep't of Educ. (June 10, 1998).

Mitigating factors in assessing the amount of a fine include the school's motive in committing the violations, and/or its good faith efforts to take corrective action.[7] A school's small size is also a mitigating factor.[8] In determining whether a school qualifies as "small", the Secretary has stated that it is based on the levels of participation in the Federal Student Aid Programs.[9] Once the median participation rate is determined, if the level of Title IV aid received is below the median level, the school qualifies as a small school.[10] This tribunal has also taken into account the simultaneous penalty of termination in reducing the amount of a fine.[11]

It is based on the aforementioned standards that the tribunal will evaluate whether the fines requested by FSA for proven violations are warranted. In its brief, FSA asserts that it considered Teddy Ulmo to be a small institution for the purposes of determining the amounts of the assessed fines. The tribunal accepts the characterization of Teddy Ulmo as a small institution for purposes of this fine action although, it is within the tribunal's purview to determine if the proposed fines are in congruence with this characterization.

Falsification of the 90/10 Requirement

To be eligible to participate in the Title IV programs, a school must have no more than 90 percent of its revenues derived from Title IV funds. 34 C.F.R. § 600.5(a)(8). In calculating what constitutes Title IV funds that must be included in the calculation, a school must use all Title IV funds that are used to pay tuition, fees, or other educational expenses, regardless of whether the funds are paid to the student or posted directly to the student's account. 34 C.F.R. § 600.5(e)(2).

Teddy Ulmo's auditor prepared a 2000-01 compliance audit in which he determined that the school met the 90/10 requirement because his analysis yielded a 89.91 percent result. According to FSA, a review of the documentation the auditor used to calculate the school's 90/10 ratio revealed that the documentation did not meet the 90/10 requirement. FSA argues that Teddy Ulmo falsified the information relied upon by the auditor. FSA states that a comparison of the school's data with the records contained in the Department's National Student Loan Data

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[7] S*ee Bnai; In re Neosho County Community College*, Docket No. 97-158-SF, U.S. Dep't of Educ. (January 12, 1999).

[8] *See* 34 C.F.R. § 668.92 and *In re Pedigree Career Institute*, Docket No. 96-95-SF, U.S. Dep't of Educ. (Decision of the Secretary) (September 30, 1997).

[9] *See Bnai* at 2 – 3.

[10] *Id*. at 3.

[11] *See In re Warnborough College*, Docket No. 95-164-ST, U.S. Dep't of Educ. (August 9, 1996); *In re Academia Arecibena de Belleza*, Docket No. 94-167-ST, U.S. Dep't of Educ. (June 5, 1995); *In re Cosmetology Training Center*, Docket No. 93-86-ST, U.S. Dep't of Educ. (January 21, 1994).

System (NSLDS) revealed that the school misrepresented as cash Title IV loan funds it received during the months of April, May, and June 2001 in order to meet the 90/10 requirement.[12] Once these funds were added into the 90/10 calculation as Title IV funds, Teddy Ulmo had a Title IV percentage of 91.3 percent. FSA also argues that students were required to pay additional loan proceeds to the school for equipment and supplies necessary to complete their coursework.[13]

Teddy Ulmo concedes that the April, May, and June 2001, Title IV loan proceeds were posted as cash because the student was given the check, and, therefore, these funds would not constitute Title IV funds received by the school. Teddy Ulmo further states that its auditor had complete knowledge of these transactions. Teddy Ulmo argues that all the information it gave to its auditor was true and correct, and the auditor exercised professional judgment in accepting the information as valid. Teddy Ulmo also argues that money fraudulently obtained by a former employee could offset the Title IV loan proceeds and the school would be in compliance with the 90/10 requirement. Additionally, the school asserts that students were not required to pay additional monies from their Title IV loan proceeds to pay for additional equipment and supplies.

A review of the evidence submitted by FSA demonstrates that Teddy Ulmo provided information classifying Title IV loan funds as cash to its auditor while on its student ledger cards these funds were identified as Title IV loan funds. The result was that according to the documentation submitted to the auditor, the school met the 90/10 requirement.[14] Although Teddy Ulmo states it assumed it was correct to identify loan funds paid to students as non-Title IV funds, this explanation is not credible. The regulations state that all Title IV funds used to pay tuition, fees, or other educational expenses must be included as Title IV funds in the 90/10 calculation. This includes Title IV loan proceeds posted directly to the student's account or paid to the student directly. *See* 34 C.F.R. § 600.5(d) and (e)(2). Although Teddy Ulmo asserts that its auditor was aware that the funds identified as cash for April, May, and June 2001, were, in fact, Title IV loan funds, this explanation is also not credible. It is not plausible that the school would inform the auditor that the Title IV loans were identified as Title IV loans on its student ledgers (i.e. the source documentation) but alter the characterization of these funds for the auditor to perform an analysis of the school's 90/10 ratio. Even if the tribunal assumes that the school's auditor was informed as to the nature of the cash payments, it is not credible that the auditor used his professional judgment in excluding these funds, and, certainly, the school has not provided any rebuttal evidence regarding its auditor's knowledge of the true nature of the funds in question. Although it is possible that some of these Title IV loan funds were, in fact, used for living expenses, and, consequently would not be included in the 90/10 calculation, the school did not delineate this for its auditor, or on the students' ledger cards. Additionally, the school has also not accounted for all Title IV loan proceeds at issue under this finding. A comparison of the

[12] *See* ED Exs. 190, 200, and 202.

[13] FSA states that it did not include these additional loan proceeds in its recalculation of Teddy Ulmo's 90/10 ratio.

[14] *See* ED Ex. 200.

NSLDS system and student ledger cards also reveals that not all of the loan funds received on behalf of students were posted to the students' ledgers. Therefore, I find that Teddy Ulmo's 90/10 calculation was improper and resulted in the school remaining eligible to participate in the Title IV programs. The gravity of this violation is that it represents a subversion of the eligibility requirements for Teddy Ulmo's participation in the Title IV programs. Given the serious nature of this violation, a fine of $20,000 is warranted.

Financial Responsibility Requirement – Executive Officer

To meet the financial responsibility standards, a school must comply with the regulatory requirements contained in 34 C.F.R. § 668.171. A school is not considered financially responsible if a person who exercises substantial control over the school exercised substantial control over another school that owes a liability for Title IV program violations. 34 C.F.R. § 668.174(b)(1). A person who exercises substantial control over a school is any person who holds an executive officer position. 34 C.F.R. §§ 600.30(a)(7) and 668.174(b). The substantial control provisions also apply to family members of any person who exercises substantial control over a school. 34 C.F.R. § 668.174(b)(1)(ii).

FSA asserts that Mr. Dion Padin exercised substantial control over Teddy Ulmo. Although official eligibility documentation lists two other individuals as owners, FSA argues that Mr. Padin was running the day-to-day operations at the school and was, in fact, listed as Chief Financial Officer, on eligibility documentation submitted to the Department. FSA states that Mr. Padin is the father of the two individuals identified as the owners of Teddy Ulmo. FSA also states that Mr. Padin formerly owned and operated Simdex Technical Institute, Inc. (Simdex). On April 15, 1991, a Final Program Review Determination (FPRD) was issued to Simdex assessing liabilities totaling $3,404,540.[15] FSA states that these liabilities were never paid. Consequently, FSA argues that Teddy Ulmo has failed to meet the financial responsibility standards contained in the Title IV regulations. Additionally, FSA argues that Teddy Ulmo misrepresented information on its recertification application that was filed in March 2000. According to FSA, Teddy Ulmo answered "No" to Question 25 on the recertification application asking whether the owner, or a director of the institution, or a member of that person's family, has within the last 10 years been an owner or executive officer of another institutions that is, or has, participated in the Title IV programs. FSA states that Teddy Ulmo intentionally omitted Mr. Padin's prior ownership of Simdex in order to avoid the consequences of failing to meet the financial responsibility standards.

Teddy Ulmo admits that Mr. Padin was President of Simdex and that Simdex was assessed liabilities totaling $3,404,540 from the Department. Teddy Ulmo asserts, however, that it is not true that Simdex failed to pay this liability. The school offers a convoluted explanation as to why Simdex does not owe this liability, from stating that Mr. Padin wrote a letter to the school's accrediting agency and the Department's Regional VI office regarding Simdex's alleged violations, to stating that he did not fail to give the Department's auditor access to documentation during an on-site review of Simdex. The school also asserts that its "No" answer

[15] Simdex did not appeal the FPRD.

on its recertification application did not constitute a misrepresentation. Instead, the school answered "No" because at the time, the President of Teddy Ulmo, Mr. Keith Lipe, knew that Simdex had ceased operations in 1990, and that 10 years had passed since the school closed in 1990. Teddy Ulmo states that it revealed that Mr. Padin was named CFO on an interim basis in July 2001, and that it is correct that Mr. Padin was running the day-to-day operations of the school. Teddy Ulmo
also denies that Mr. Padin's daughters did not, and had not, at any time participated in the day-to-day operation of the school.

A review of the evidence reveals that an FPRD dated April 15, 1991, was sent to Mr. Padin in his capacity as President of Simdex.[16] The April 15, 1991, FPRD assessed liability for several Title IV program violations in the amount of $3,406,282. Although Teddy Ulmo attempts to argue the merits of the Simdex FPRD, it is not relevant to this proceeding. The liability was assessed, and Simdex had the opportunity to challenge the FPRD at the time it was issued. FSA also demonstrated that the Simdex liability was never paid to the Department.[17] Further, as the FPRD was not issued, and therefore, liability not assessed until 1991, the 10-year time frame listed in Question 25 of Teddy Ulmo's recertification application was met. Teddy Ulmo should have disclosed that Mr. Padin exercised substantial control over the institution and that his daughters were the listed owners. Teddy Ulmo now concedes that Mr. Padin does have substantial control over the school, and although it argues that Mr. Padin has only been involved as an executive officer since 2001, Mr. Padin's further admission that his daughters, the listed owners of Teddy Ulmo, have never been involved in running the school, further damages the argument that the school was not attempting to mislead the Department in its 2000 recertification application.

The gravity of this violation is serious. Once again, the evidence shows that Teddy Ulmo knew that it would not be recertified as eligible if its true ownership as well as who actually exercised substantial control over the school, was known to the Department. Given the school's attempt to disguise its true ownership as well as who controlled the running of the school, a maximum fine of $27,500 is warranted.

Disbursement of Funds to Students with Inadequate Clock Hours

For a school that uses clock hours to measure academic progress, the school must disburse Pell grants in incremental payments related to the number of clock hours in the programs of instruction. 34 C.F.R. §§ 690.63 and 690.64. For a program that is equal to or less than one academic year in length and is measured in clock hours, the first payment period is the period of time in which the student completes the first half of his/her educational program. 34 C.F.R. § 668.4(b)(1). The second payment period is the period of time in which the student

[16] *See* ED Ex. 198.

[17] *See* ED Ex. 204 (July 2, 2003, memorandum from Nancy I. Hoglund, Supervisor, Debt Management Group, U.S. Dep't of Educ., stating that no payment was received for the liability assessed in the Simdex FPRD.)

completes the second half of his/her educational program. 34 C.F.R. § 668.4(b)(1). A school may not disburse a second Pell payment until the student has completed the requisite hours for which Pell disbursements have previously been made. 34 C.F.R. § 690.75(a)(3)(i). For an educational program that is more than one academic year in length, the payment period for subsequent academic years or fractions of academic years, is the period of time in which a student completes one-half of the academic year or the remaining hours in the student's educational program, whichever is completed first. 34 C.F.R. § 668.4(b)(2). A clock hour is defined as a period of time consisting of a 50- to 60-minute class, lecture, or recitation in a 60-minute period, a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period, or sixty minutes of preparation in a correspondence course. 34 C.F.R. § 600.2

A school must also disburse Federal Family Education Loans (FFEL) in accordance with Department regulations. Loan proceeds should be disbursed in two installments. For a first-time student enrolled in the first year of an undergraduate educational program, the first disbursement cannot be made until 30 days after the first day of the student's program of study. 34 C.F.R. § 682.604(c)(5). For institutions with clock-hour educational programs, a second disbursement may not be delivered until the later of the calendar midpoint between the first and last scheduled days of classes for the loan period, or the date that the student has completed the first half of the clock hours in the loan period. 34 C.F.R. § 682.604(c)(4).

During the award years reviewed, FSA states that the clock hours in the school's programs varied, but ranged from 600 to 1170 hours. For Teddy Ulmo's 900 clock hour programs, FSA states that the first payment period would be from one to 450 hours, and the second payment period would be from 451 to 900 hours. FSA asserts that Teddy Ulmo improperly obtained additional Pell disbursements for students who did not complete the requisite hours of instruction.[18] Further, FSA contends that to conceal this misconduct, the school falsified students' regular attendance and/or make-up hours the students allegedly attended.[19] For students with FFEL loans, FSA contends that Teddy Ulmo routinely disbursed loan proceeds in one installment early in each student's period of enrollment.[20] Additionally, FSA states that to conceal this misconduct, the school falsified students' regular attendance

[18] The students are identified as Nos. 4, 11, 16, 25, 36, 37, 40, 43, 47, 48, 49, 58, 59, 64, 65, 69, 76, 77, 80, 81, 83, 92, 94, 95, 103, 104, 106, 107, 114, 118, 127, 130, 131, 138, 141, 145, 148, 149, 151, 155, 161, 162, 163, 174, 176, 178, 182, and 183. All student numbers in this decision refer to those originally identified in the Notice by name and number.

[19] Of the students identified in Footnote No.18, FSA charges that the school falsified attendance records for Nos. 4, 11, 16, 25, 36, 43, 47, 48, 49, 64, 65, 69, 76, 77, 80, 83, 92, 94, 95, 103, 104, 107, 114, 118, 127, 130, 138, 141, 145, 148, 155, 161, 162, 163, 174, 176, 178, 182, and 183.

[20] The students are identified as Nos. 19, 24, 28, 29, 34, 35, 40, 45, 48, 51, 62, 63, 64, 67, 68, 71, 80, 81, 93, 111, 119, 121, 125, 126, 127, 130, 135, 137, 145, 152, 155, 161, 163, 166, 168, 175, 178, 180, 182, and 185.

and/or make-up hours the students allegedly attended.[21]

Teddy Ulmo argues that it had never before been cited or accused of falsifying student attendance or make-up hours, or told the procedures it used to allow students to make up hours were contrary to the regulations. Teddy Ulmo argues that its auditors would simply add up the students' regular attendance hours along with make-up hours. According to the school, make-up hours would consist of the instructor assigning specific projects, and the instructor would use his/her professional judgment to determine the number of hours to credit towards the student's attendance. Teddy Ulmo contends that its school catalog contemplates make-up hours with its statement that students will be given credit for assigned projects.

A school whose educational programs are based on clock hours must disburse Title IV funds in accordance with the regulations set out above. A review of the record reveals that Teddy Ulmo did award second Pell disbursements to students who had not completed the requisite number of clock hours.[22] Additionally, the record also demonstrates that the school improperly disbursed FFEL loan proceeds to students who had not completed the requisite number of credits.[23] With regard to both the improper Pell and FFEL loan disbursements, the evidence also demonstrates that Teddy Ulmo used make-up hours for which students were given credit for as clock hours.[24] The evidence reveals that the school credited students with so many make-up hours that it is not credible to believe these make-up hours were legitimate. One of the most egregious examples of the school's use of make-up hours concerns Student No. 11. Student No. 11 was credited with 122 make-up hours on January 9, 2002, 40 make-up hours on January 23, 2002, 35 make-up hours on January 24, 2001, 26 make-up hours on January 28, 2001, and 16 make-up hours on January 31, 2002, for a total of 239 make-up hours for the month of January 2001. The result for Student No. 11 was to make it appear that this student had earned the Title IV funds disbursed before the student stopped attending in March 2001. Although Teddy Ulmo argues that its catalog contemplates make-up hours, the school's use of make-up hours was used

[21] Of the students identified in Footnote No. 20, FSA charges that the school falsified attendance records for Nos. 48, 64, 67, 68, 80, 127, 130, 145, 155, 161, 163, 178, 182, and 183. Although FSA lists Student No. 183 as having falsified records with regard to the FFEL portion of this finding, the FPRD does not list this student in the FFEL portion of this finding, rather, this student is already counted as having falsified records with regard to the Pell portion. *See* Footnote No. 19.

[22] *See* ED Exs. 4, 11, 16, 25, 36, 37, 40, 43, 47, 48, 49, 58, 59, 64, 65, 69, 76, 77, 80, 81, 83, 92, 94, 95, 103, 104, 106, 107, 114, 118, 127, 130, 131, 138, 141, 145, 148, 149, 151, 155, 161, 162, 163, 174, 176, 178, 182, and 183.

[23] *See* ED Exs. 19, 24, 28, 29, 34, 35, 40, 45, 48, 51, 62, 63, 64, 67, 68, 71, 80, 81, 93, 111, 119, 121, 125, 126, 127, 130, 135, 137, 145, 152, 155, 161, 163, 166, 168, 175, 178, 180, 182, and 185.

[24] *See* ED Exs. 4, 11, 16, 25, 36, 43, 47, 48, 49, 64, 65, 67, 68, 69, 76, 77, 80, 83, 92, 94, 95, 103, 104, 107, 114, 118, 127, 130, 138, 141, 145, 148, 155, 161, 162, 163, 174, 176, 178, 182, and 183. Make up hours were marked with an "R" on the students' attendance sheets.

to ensure the students' continued eligibility to receive Title IV funds. Given the evidence that for some students, the school attempted to credit a student's attendance for over half of the educational program's hours of attendance with make-up hours, the school's argument is simply not credible.

FSA assessed a fine of $1000 for each of the 36 improper Pell and FFEL loan disbursements, and a fine of $2500 for each of the 52 Pell and FFEL loan disbursements where the school falsified attendance records to conceal its misconduct. The proposed fine totals $166,000. Although Teddy Ulmo's conduct is well documented, the tribunal finds FSA's fine of $1000 for each of the 36 improper Pell and FFEL loan disbursements, and a fine of $2500 for each of the 52 instances where the school falsified records, to be high. For the FFEL violations, FSA proposes a fine, which in many cases is equal to or higher than the total amount of FFEL funds at issue. This tribunal has allowed the amount of the Title IV funds at issue to be a guide in assessing the amount of a fine. Additionally, under this global finding, FSA counts students who had falsified attendance records and received both Pell and FFEL disbursements as two violations for each student. Each student should only be counted once under this violation. Nowhere in the statutory or regulatory provisions does it provide for assessing a fine based on each type of Title IV aid received by the student. Consequently, each student, whether the student received either or both Pell and FFEL funds should be counted as one violation under this finding. For the 33 students with improper Pell and/or FFEL disbursements but no allegation of falsified records, a fine of $1000 each is appropriate. For the 41 students with improper Pell disbursements and/or FFEL disbursements and evidence of falsified records, a fine of $2000 each is appropriate. The fine for this finding totals $115,000.

Pell Overawards

To be eligible for Pell funds, a student must be enrolled in a program requiring a minimum of 15 weeks and 600 hours of instructional time. 34 C.F.R. § 668.8(d). Although students are eligible for FFEL funds for programs less than 600 hours, the loan must be pro-rated. 34 C.F.R. § 682.204. The amount of a student's Pell and FFEL disbursements are calculated using the guidelines contained in 34 C.F.R. §§ 682.204, 690.62, and 690.63. For schools whose programs are measured in clock hours, the calculation is based on the number of hours and the number of weeks required to complete the program of study. 34 C.F.R. §§ 682.204 and 690.63.

According to FSA, due to the nature of Teddy Ulmo's programs, students were required to complete all clock hours contained in their programs of study, and no excused absence policy would permit students to complete their programs of study without actually attending all clock hours required. In numerous files, FSA stated that additional hours marked with an "R" were added to students' regular attendance sheets, and when questioned, school officials informed the Department reviewers that these were make-up hours that students completed when they missed their regularly scheduled classes. As enumerated in the Inadequate Clock Hours finding, FSA contends that school officials would add make-up hours on the monthly attendance sheets even when students were not in school, and that make-up hours were awarded for completing homework assignments. FSA argues that the use of falsified make-up hours made it appear that

the students attended the school longer than they actually had thereby having a significant impact on the Title IV funds the students were actually entitled to receive. Students' Pell and FFEL awards were based on the program length identified in their contracts. The students, however, did not actually complete those hours. According to FSA, the students' actual program lengths were between 50 and 600 hours shorter than the programs for which the students actually contracted. Once the falsified hours are removed from the students' attendance, the students would not have been entitled to receive the full amount of Title IV aid they were awarded.[25]

FSA contends that for students enrolled in Teddy Ulmo's 600 clock hour Nail Technician Program, the reduction in hours made the program ineligible for Pell funds for some students.[26] For two students enrolled in the 1170 clock hour Cosmetology Program, FSA claims that they had so many make-up hours, their actual programs of study were also less than 600 clock hours, and, therefore, were ineligible for Pell funds.[27] FSA argues that this improper conduct further exemplifies Teddy Ulmo's blatant disregard for its responsibilities to the Department and to its students. In order to send the appropriate message that such conduct will not be tolerated, FSA states that a fine of $150,000, or a fine of $2,500 for each of the 60 students included in this finding, should be imposed.

The record demonstrates that Teddy Ulmo improperly included make up hours as part of the students' attendance as well as falsified make-up hours in its students' attendance records, resulting in overawards to the students listed in the Notice. In some cases, the school added make-up hours totaling approximately half of students' attendance in their programs of study.[28] Although the school's conduct resulted in both overawards and the premature disbursement of Title IV funds identified under the Notice's Inadequate Clock Hours finding, the violations stem from the same misconduct – the improper inflation of students' attendance records. While each violation may constitute a basis on which a fine may be assessed, the Department should recognize that assessing a fine based on the same conduct as to the same students results in an inappropriate aggregate of penalties.[29] Although it appropriate to assess a higher fine where there is evidence of fraudulent conduct, that same fraudulent conduct should also not be used to justify a higher fine amount under multiple findings. Consequently, a lesser fine than FSA proposes for this violation is appropriate. For the 35 students who received overawards due to inflated

[25] The students are identified as Nos. 4, 9, 16, 26, 40, 43, 46, 50, 65, 66, 75, 77, 79, 89, 92, 101, 103, 104, 107, 108, 109, 113, 114, 118, 124, 129, 138, 140, 146, 148, 156, 158, 162, 167, 171, 174, 176, and 182.

[26] The students are identified as Nos. 18, 40, 41, 61, 87, 88, 97, 122, 132, 144, 154, 164, 173, 177, 179, 184, and 186.

[27] Student Nos. 20 and 33.

[28] *See* ED Exs. 4, 18, and 20.

[29] Examples include student Nos. 4, 16, 43, 65, 77, 92, 103, 104, 107, 114, 118, 138, and 182.

attendance records who were not included in the Inadequate Clock Hours finding, a fine in the amount of $2000 per student is imposed.[30] Therefore, Teddy Ulmo's conduct warrants a total fine of $70,000.

Failure to Calculate and Pay Refunds

During the 1998 – 2000 award years, Title IV and its implementing regulations required a school to have a fair and equitable refund policy under which the school refunded unearned tuition, fees, room and board, and other charges to a student who received Title IV funds if the student withdrew, dropped out, was expelled, or otherwise failed to complete the program on or after the first day of classes of the period of enrollment for which the student was charged. 34 C.F.R. § 668.22(a)(1)(ii). A school's refund policy was considered fair and equitable if it provided for a refund of at least the larger of the amount provided under applicable state law, the Federal *pro rata* refund policy for first time students, or the school's own refund policy. 34 C.F.R. § 668.22(b). A school is required to pay a refund of Pell funds within 30 days, and of FFEL funds within 60 days, of the date the student officially withdraws, is expelled, or the school determines that the student has unofficially withdrawn. 34 C.F.R. §§ 668.22(h)(2)(iv) and 682.607(c). When a student withdraws without notifying the school, the withdrawal date is the last recorded date of class attendance by the student. 34 C.F.R. § 682.21(b).

Beginning in October 2000, a school was required to follow a new return of funds requirement rather than the old refund regulations. For students withdrawing after this date, the school was required to determine if the amount of Title IV assistance disbursed to the student exceeded the amount of Title IV funds earned as of the date of the student's withdrawal. For both Pell and FFEL funds, the school must refund the amounts not earned by the student within 30 days after the student's withdrawal date. 34 C.F.R. § 668.22(j)(1) and 682.607(c) (2001).

FSA alleges a variety of refund violations. For a number of students, FSA asserts that Teddy Ulmo failed to properly calculate and pay refunds.[31] Of the students listed under this finding, FSA alleges in some cases the school calculated a refund but simply failed to make the required payment. For other students, FSA contends that Teddy Ulmo failed to calculate and pay refunds to students it knew were no longer in attendance. Additionally, FSA states that the school failed to pay refunds to some students who were "no shows." In order to conceal its misconduct, FSA alleges that the school falsified the regular attendance and/or make-up hours

[30] The 35 students are Student Nos. 9, 18, 26, 41, 46, 50, 61, 66, 75, 79, 87, 88, 97, 101, 108, 109, 113, 122, 124, 129, 132, 140, 144, 146, 154, 156, 158, 164, 167, 171, 173, 177, 179, 184, and 186.

[31] The students are identified as Nos. 2, 3, 5, 6, 7, 8, 10, 11, 12, 15, 17, 19, 21, 22, 23, 24, 27, 28, 29, 30, 32, 35, 36, 37, 38, 39, 42, 43, 44, 45, 51, 53, 53, 54, 55, 56, 57, 58, 60, 62, 63, 64, 70, 71, 72, 74, 78, 82, 84, 85, 86, 90, 91, 93, 98, 99, 102, 105, 110, 111, 112, 115, 116, 117, 119, 120, 121, 123, 125, 126, 127, 128, 131, 133, 136, 139, 142, 149, 150, 152, 153, 155, 157, 159, 160, 165, 166, 168, 170, 172, 175, 180, 181, 182, 183, and 185.

used in the refund calculations for some of these students.[32] FSA also argues that Teddy Ulmo routinely placed students on leaves of absence (LOA) in order to delay the return of Title IV funds. FSA seeks a fine of $500 for each of the 41 students for whom the school failed to properly calculate and pay refunds, and a larger fine of $2500 for the 54 students for whom the school falsified records to mask its misconduct. In total, FSA seeks a fine of $155,500.

The record is replete with documentation demonstrating that Teddy Ulmo failed to calculate and pay refunds to the students listed in the FPRD.[33] Again, the evidence shows that the school inflated attendance records to reduce the amounts of students' refunds.[34] For 17 students who did not attend classes and were identified as "no-shows", the school failed to pay refunds at all. For some of the students whose attendance was falsified, the calculated refunds, although not
paid, were incorrect, due to the school's falsifications or failure to include FFEL funds in its calculation.[35]

In considering the gravity of the violation, the school's failure to calculate and pay refunds with regard to the students whose attendance was not inflated, was grossly negligent, and a fine is warranted. FSA's reason for proposing a higher fine for students with falsified attendance records is the same basis it used to propose a higher fine in the Inadequate Clock Hours and Overawards findings. Given that this finding stems from the same misconduct, a higher fine amount is not appropriate based on the same falsifications for the same students. The amount of the fine should take into account that the same misconduct for the same students has also formed the basis for a higher fine under the previous findings.[36] Conversely, FSA identifies 18 students who were not listed as having falsified records under the Inadequate Clock Hours

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[32] Of the students identified in the previous footnote, FSA alleges that the school falsified attendance records for Student Nos. 2, 3, 8, 11, 17, 19, 22, 24, 27, 29, 32, 35, 37, 43, 57, 58, 60, 62, 63, 64, 71, 74, 82, 84, 91, 93, 98, 99, 110, 111, 112, 115, 116, 117, 119, 120, 125, 126, 127, 128, 133, 139, 150, 152, 153, 155, 159, 168, 175, 180, 181, 182, 183, and 185.

[33] *See* ED Exs. 2, 3, 5, 6, 7, 8, 10, 11, 12, 15, 17, 19, 21, 22, 23, 24, 27, 28, 29, 30, 32, 35, 36, 37, 38, 39, 42, 43, 44, 45, 51, 53, 53, 54, 55, 56, 57, 58, 60, 62, 63, 64, 70, 71, 72, 74, 78, 82, 84, 85, 86, 90, 91, 93, 98, 99, 102, 105, 110, 111, 112, 115, 116, 117, 119, 120, 121, 123, 125, 126, 127, 128, 131, 133, 136, 139, 142, 149, 150, 152, 153, 155, 157, 159, 160, 165, 166, 168, 170, 172, 175, 180, 181, 182, 183, and 185.

[34] *See* ED Exs. 2, 3, 8, 11, 17, 19, 22, 24, 27, 29, 32, 35, 37, 43, 57, 58, 60, 62, 63, 64, 71, 74, 82, 84, 91, 93, 98, 99, 110, 111, 112, 115, 116, 117, 119, 120, 125, 126, 127, 128, 133, 139, 150, 152, 153, 155, 159, 168, 175, 180, 181, 182, 183, and 185.

[35] *See* ED Exs. 19 and 20.

[36] Student Nos. 11, 25, 43, 64, 127, 155, 182, and 183 are also listed as having falsified records under the Inadequate Clock Hours Finding.

Finding as having falsified attendance records under this finding.[37] The other types of improper conduct identified under this finding – the failure to include FFEL funds in its refund calculations and the failure to pay the refunds - forms another basis on which this violation and a subsequent fine may be based. Consequently, a lesser fine than FSA identifies is appropriate. For the 95 students for whom the school failed to properly calculate and pay refunds, a fine of $500 per student, totaling $47,500, is appropriate.

Improper Retention of Students' Credit Balances

If a school receives Title IV funds on behalf of a student that are in excess of the student's cost of attendance, it must return those funds to the student unless the student states in writing that the school may retain the additional funds to cover future costs. 34 C.F.R. §§ 668.164(e) and 668.165(b)(1)(iii). Schools have 14 days once the excess balance is created to return the funds to the student. 34 C.F.R. § 165(e)(1). Any funds the student authorized the school to retain for future costs must be returned either by the end of the loan period for FFEL proceeds or by the end of the last payment period in the award year for which any Pell funds were awarded. 34 C.F.R. § 668.165(b)(5).

FSA argues that Teddy Ulmo failed to timely release credit balances for 22 students.[38] FSA characterizes the school's conduct as extremely egregious considering the underprivileged nature of the school's student population. According to FSA, students rely on these excess funds to pay for transportation, childcare, and other living expenses. Additionally, FSA asserts that students were also expected to purchase supplies that Teddy Ulmo failed to provide. FSA seeks a fine of $22,000, representing $1000 each for the 22 students.

Teddy Ulmo admits that some student credit balances were not paid to the student on a timely basis. In its defense, the school states that it has now refunded credit balances to students. The school also argues that the credit balances were due mainly to the crossover students that received additional Pell funds due to the increase in the amount of Pell in the subsequent award year. The school also states that numerous files were vandalized and/or deleted by a rogue employee. The school also denies that it expected students to use their credit balances to pay for additional supplies and that it is not true that it failed to supply students with the appropriate equipment and/or supplies.

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[37] These are Student Nos. 19, 24, 29, 35, 37, 58, 62, 63, 71, 93, 111, 119, 125, 152, 168, 175, 180, and 185. The tribunal is at a loss as to why FSA did not identify these students as having falsified attendance records under the Inadequate Clock Hours finding. Consequently, the tribunal will not consider the alleged falsification of attendance records as a basis for a higher fine for these students.

[38] The students are identified as Nos. 4, 5, 16, 25, 26, 37, 43, 46, 65, 69, 88, 104, 107, 109, 132, 141, 146, 148, 173, 174, 176, and 186.

The record reveals that Teddy Ulmo failed to return credit balances to students on a timely basis. In the evidence submitted by FSA, a balance is owing to the 22 students identified in the Notice.[39] The failure to return students' credit balances is a significant violation, and does merit a fine. In assessing the amount of a fine, the tribunal may consider the school's motive in committing the violation as well as any efforts to take corrective action. As a factor in its calculation of the fine, FSA's characterizes the school's behavior as extremely egregious given the students' economic status. Despite FSA's attempt to base its proposed fine amount on this factor, it is not relevant in assessing what constitutes an appropriate fine. The tribunal notes that all recipients of Title IV Pell funds are considered to be students in financial need, as Pell funds are based upon that predicate. Although Teddy Ulmo claims it has since refunded students' credit balances, it offers no evidence to substantiate this claim, and without any evidence, this tribunal is forced to disregard this mitigating factor in consideration of the appropriate amount of the fine. Consequently, the tribunal finds that a lesser fine than the one proposed by FSA is appropriate, and orders a fine in the amount of $500 for each of the 22 students, totaling $11,000.

Disbursement of Title IV funds to Ineligible Students (Ability-to-Benefit)

To be eligible to receive Title IV funds, a student must have a high school diploma, a general education development certificate (GED), or be beyond the age of compulsory secondary school attendance and have the ability to benefit from the educational program provided by the school. 20 U.S.C. § 1091 and 34 C.F.R. § 668.32(e). A student without a high school diploma or GED must pass an independently administered ability to benefit (ATB) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2). The purpose of requiring the ability to benefit test is to prevent a school from receiving tuition from unqualified students. *See In re Waukegan School of Hair Design*, Docket No. 96-66-SP, U.S. Dep't of Educ. (Decision of the Secretary) (September 8, 1997).

For an ATB test to be valid, it must, among a host of requirements laid out in 34 CFR Subpart J, be independently administered by someone not affiliated with the school and administered in accordance with the test publisher's guidelines. 34 C.F.R. § 668.141. An ATB test is considered properly administered if the test publisher certifies the test administrator and the test administrator administers the test in accordance with the test instructions and in a manner that ensures the integrity and security of the test. 34 C.F.R. § 668.152(d). A school will be held liable for Title IV funds disbursed to students only if the school (1) used a test administrator who was not independent at the time the test was given, (2) compromised the testing process in any way, or (3) is unable to document that the student received a passing score on an approved test. 34 C.F.R. § 668.154. A test is considered not independently administered if a school compromises the test security or testing procedures or if the school pays a test administrator a bonus, commission, or other incentive based upon test scores or pass rates. 34 C.F.R. § 668.151(c).

[39] For example, Student No. 4 had a credit balance of $235 and Student No. 5 had a credit balance of $219. The students' ledger statements do not show that the credit balances were returned to the students. *See* ED Exs. 5 and 6.

FSA argues that Teddy Ulmo breached its fiduciary duty to the Department by using invalid ATB tests and falsified certifications as the bases for students' Title IV eligibility. For 10 students, FSA states that although these students have a certification in their files claiming each student passed a Spanish Assessment of Basic Education (SABE) test administered by the school's test administrator, the students never took the test.[40] For three students, FSA claims that there was no documentation as to whether the students took the SABE ATB test.[41] FSA also alleges that three students received Pell funds although they failed the SABE ATB test.[42] FSA further alleges that all of the ATB tests[43] administered by the school's test administrator, Ms. Carmen Rosa, are invalid because she was not registered or certified as an administrator of the SABE ATB test by the test's publisher, McGraw Hill.[44]

FSA also argues that in over half the cases in which it obtained a SABE test answer sheet from Teddy Ulmo, the answer sheets were a "doctored" version of the test. According to FSA, this means that the answer sheets used were copies, and that McGraw Hill does not consider "doctored" or copied tests valid. Finally, FSA alleges that it uncovered numerous other improprieties with respect to the school's administration of ATB tests including students who stated that there were answers already marked in the test booklets when they took the tests, students who stated the test administrator left the room during the exam, students who said they left numerous answers blank or did not finish the test but were certified as passing, students who stated the person identified as the test administrator was not, in fact, the actual person who administered the test, and that the dates the ATB tests were allegedly administered have been altered.

FSA seeks a fine of $2500 for each of the 103 falsified ATB certifications and/or tests, and a fine of $1000 each for the three students for whom there was no evidence they had taken the test, and for the three students who failed the SABE ATB tests.

Teddy Ulmo asserts that if a student had an ATB certification in his or her file, then as far as it was concerned, the student took and passed a test administered by the school's independent test administrator. The school also asserts that it did not falsify any ATB tests or test

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[40] The students are identified as Nos. 23, 27, 30, 58, 72, 90, 97, 105, 127, and 150.

[41] The students are identified as Nos. 38, 39, and 116.

[42] The students are identified as Nos. 86, 91, and 170.

[43] The students at issue are identified as 1, 3, 6, 8, 9, 13, 14, 17, 18, 21, 24, 25, 26, 28, 29, 31, 35, 36, 37, 40, 42, 47, 51, 52, 53, 56, 57, 60, 62, 64, 65, 66, 68, 69, 70, 71, 73, 75, 77, 80, 83, 84, 87, 89, 92, 93, 94, 96, 98, 99, 100, 102, 103, 110, 111, 112, 115, 119, 120, 121, 123, 125, 126, 128, 129, 130, 131, 134, 135, 136, 139, 143, 145, 146, 147, 153, 154, 155, 157, 158, 164, 166, 167, 168, 169, 172, 173, 175, 178, 181, 182, 183, and 186.

[44] *See* ED Ex. 203.

certifications. Teddy Ulmo states that the school's test administrator, Ms. Carmen Rosa, is a certified test administrator.[45] Teddy Ulmo argues that it is not its responsibility to ensure that Ms. Rosa uses tests that are not copied, or that she follows the guidelines in how she administers the tests. Further, the school claims that the other person students identified as having administered the tests is Ms. Rosa's daughter-in-law who was also certified to administer the ATB tests. Teddy Ulmo states that it has no knowledge of tests being administered after a student has begun enrollment or what the test administrator does behind "closed doors".

The evidence shows that Teddy Ulmo provided ATB certifications for 10 students who did not take the SABE ATB test.[46] The evidence further shows that the school enrolled and disbursed Title IV funds to three students who failed their ATB tests.[47] The tribunal is also persuaded that the school knew or should have known not to disburse Title IV funds to the three students who failed the ATB test. Further, FSA demonstrated that Teddy Ulmo failed to document whether three students admitted on the basis of their ability-to-benefit took and passed an ATB test. The evidence also reveals that Ms. Carmen Rosa administered the SABE ATB tests for 93 students.[48]

Despite FSA's evidence regarding the test administrator's lack of certification, a school's liability for Title IV funds is limited to three areas, which focus on the integrity of the ATB examination.[49] In *Waukegan*, the Secretary held that "any failure to comply with the publisher procedures does not necessarily render the test so unreliable that it may not be considered independently administered." By complying with the publisher's procedures, the school can avoid questions regarding the integrity of the testing process. *Id*. The Secretary stated that a school would not be held financially responsible if it did not interfere with the independence of the testing process and was not involved with the testing. *Id*.

The school's test administrator used tests that were not approved by the test publisher and as stated above, the test administrator was not certified. There were many other flaws in the testing process that renders the ATB tests unreliable. Although the mere fact that the test administrator was not certified does not provide a basis for imposing a penalty.[50] The flaws, here, indicate that the tests were not independently administered. The tribunal finds that Teddy

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[45] *See* Resp. Ex. 24.

[46] *See* ED Exs. 23, 27, 30, 58, 72, 90, 97, 105, 127, and 150.

[47] *See* ED Exs. 86, 91, and 170.

[48] The evidence shows that Ms. Rosa was not a certified test administrator, and that Ms. Rosa used a "doctored" version of the test. *See* ED Exs. 203.

[49] 34 C.F.R. § 668.154.

[50] *See* Waukegan at 2 - 4.

Ulmo's failure to document its students' ATB tests along with the myriad of irregularities call into question both the reliability of the ATB tests as well as whether they were independently administered. The nature of this violation is enough to warrant a fine of $500 for each of the 96 students.[51] For the three students who failed the ATB test, a fine of $1,000 per student is appropriate. The tribunal also finds that a fine of $2,000 for each of the 10 students with falsified test certifications is appropriate. The fine totals $71,000.

Failure to Account for Pell Drawdowns

Title IV funds are held in trust by a school on behalf of the intended student beneficiaries and the Secretary. 34 C.F.R. § 668.161(b). A school may not use Title IV funds for any other purpose. *Id*. In its capacity as a fiduciary, a school is subject to the highest standard of care and diligence in accounting to the Department for the funds received under the Title IV programs including the expectation that it operate under sound cash management principles in its handling of Title IV funds. 34 C.F.R. § 668.82(b)(1).

FSA argues that Teddy Ulmo was not able to account for the Pell funds the school received. FSA alleges that the school drew down $46,421.52 in Pell funds during the period from July 1, 2000, until November 22, 2002, that it did not disburse to students.[52] FSA asserts that to date Teddy Ulmo has failed to account for those funds. For its failure to account for its Pell drawdowns, FSA seeks a fine of $20,000.

Teddy Ulmo argues that all of its Pell drawdowns were credited to its' students' accounts. The school states that it submitted a revised Pell Fiscal Review Report to FSA's New York Case Team.[53] In this report, Teddy Ulmo claims that the negative amount due to late refunds were offset by reimbursement requests submitted, but not disbursed by the Department, during the
months of January – March 2003.[54] The school claims that FSA never acknowledged receipt of the documentation it sent.

The evidence reveals that the total amount of Pell drawdowns exceeded the amount of Pell disbursed by Teddy Ulmo according to its own financial records.[55] According to the records

[51] This fine includes the three students separately listed as not having any documentation of having taken and passed an ATB test.

[52] *See* ED Exs. 190, 191, 192, and 201.

[53] *See* Resp. Exs. 22A-H.

[54] *See* Resp. Exs. 25 - 25A.

[55] *See* ED Exs. 190, 191, 192, and 201. In ED Ex. 201-1 through 201-186, the school's own records show the Pell drawdowns, on a daily basis, from July 5, 2000, through June 6, 2002, for all students minus the amounts refunded to students.

produced by National Student Loan Database, Teddy Ulmo drew down $46,421.52 more in Pell funds than it disbursed according to the school's own financial records. The tribunal is convinced that the school drew down more Pell funds that it disbursed.[56] Teddy Ulmo's draw down of funds that it did not disburse is a serious violation of its fiduciary duty. In considering the appropriate fine amount, the tribunal has held that it may consider the amount of loss suffered by the Department along with the gravity of the violation. The tribunal notes that the loss suffered by the Department based on this violation stands at approximately $46,000. The tribunal can look to whether there are any aggravating factors, which might merit the imposition of a higher fine such as evidence of fraudulent conduct. No such aggravating factors have been demonstrated here. Therefore, the tribunal finds that a fine of $15,000, for the school's failure to account for Pell funds is appropriate.

Questionable Loan Practices and Unaccounted for FFEL Proceeds

A school is required to disburse Title IV loan funds in excess of students' tuition and fees as credit balances or for living expenses. 34 C.F.R. § 668.165(e)(1). According to FSA, Teddy Ulmo changed its procedures for payment of these credit balances during the period under review. Prior to January 2001, the school placed the credit balances in a stipend fund, and disbursed the money to students in monthly $100 payments. After January 2001, the school would determine how much of the students' loans were needed to cover the tuition and fees not covered by Pell funds. The remaining loan funds would then be given to the students when the loan checks were cashed.

FSA states that the school provided a handwritten record of the stipend payments it allegedly made to students. After the school changed its procedures, FSA asserts that the school allegedly gave students receipts for the loan funds to be applied to their accounts, but that the school did not maintain any record of its issuance of these receipts. FSA also alleges that neither the stipend payments (pre-January 2001), nor the lump sum payments (post-January 2001), were posted to the students' ledgers.[57] FSA claims that when it asked Teddy Ulmo for documentation regarding the expenditure of excess FFEL funds, the handwritten ledger provided by the school was incomplete. FSA argues the period after January 2001 is of more concern. According to FSA, there is no record of any payments for living expenses being made to students, and several students have stated that did not receive the excess FFEL funds. Based on these discrepancies and the lack of any supporting documentation, FSA argues it has no choice but to consider FFEL funds not posted to students' accounts as unaccounted for loan funds, unless a student informed

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[56] Teddy Ulmo unsuccessfully attempts to rebut FSA's evidence with its "Revision of Fiscal Review Worksheet." *See* Resp. Ex. 22. A comparison of the school's revised data does not correspond as revisions to its original data. *See* Resp. Exs. 22B and ED Ex. 201.

[57] *See* ED Ex. 14-39.

FSA that he or she received the remaining loan funds.[58] FSA also asserts that 12 students informed FSA that they did not sign the loan checks that were issued on their behalf.[59] In some cases, FSA alleges that the student withdrew before the loan check was even issued. To bolster its claim, FSA states that copies of the cancelled loan checks verified that the checks were cashed and/or deposited with falsified signatures. FSA seeks a fine of $1,000 for each of the 62 instances where it alleges the school failed to account for the loan proceeds, and a fine of $2,500 for each of the 12 students whose student loan check was cashed with a forged signature. The proposed fine totals $92,000.

Teddy Ulmo argues that prior to January 2001, it paid the $100 monthly stipend amounts and the payments were recorded in a hand-written ledger. After January 2001, the school states that students would sign a document that is maintained in the students' files accounting for the entire loan amount.[60]

A review of the student files reveals that the school did not disburse stipend payments or lump sum payments to students' ledgers in the manner claimed by Teddy Ulmo, and the school did not account for the receipt of FFEL funds, in whole or in part, in the students' ledgers.[61] [62] As a result, the school retained more FFEL funds that it was entitled to keep.

An allegation of forged signatures is extremely serious. For the alleged 12 check forgeries, FSA submitted copies of the cancelled checks. FSA states these 12 students said they did not sign their loan checks. FSA bolsters its claim by stating that some of these 12 students

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[58] The students identified are Nos. 14, 18, 19, 20, 25, 28, 33, 34, 35, 37, 40, 45, 46, 48, 51, 52, 62, 63, 67, 68, 69, 73, 77, 80, 81, 87, 88, 92, 93, 100, 103, 111, 118, 119, 125, 126, 127, 129, 130, 138, 141, 143, 145, 146, 147, 155, 156, 161, 166, 168, 171, 173, 174, 175, 177, 178, 180, 183, 185, 186, 187, and 188.

[59] The students identified are Nos. 24, 29, 51, 64, 92, 111, 113, 121, 135, 166, 168, and 178.

[60] *See* Resp. Exs. 26 - 33, and 34 – 35A.

[61] *See* ED Exs. 14-39, 18-21, 19-18, 25-31, 28-18, 33-50, 35-23, 37-35, 40-3, 45-12 & 13, 45-13, 46-63, 48-34, 51-15, 52-8, 62-23, 63-14, 67-20, 68-35, 69-47, 73-10, 77-51, 80-32, 81-24 through 29, 87-23, 88-13, 92-9, 93-22, 100-7, 103-60, 111-21, 118-33 & 34, 119-28, 125-10, 126-19, 127-23, 129-36, 130-26, 138-50 through 54, 141-60 through 62, 143-8 through 11, 145-39, 146-36, 147-8, 155-29, 156-29 through 156-33, 161-33, 166-18, 168-17 through 19, 171-25, 173-26, 174-36, 175-19, 177-23, 178-29, 180-20, 183-43 through 45, 185-20, and 186-43.

[62] For Student No. 40, the student enrolled twice. For the ledger card for the first enrollment, no FFEL payments are recorded, and the violation did occur. For the purpose of clarification, the tribunal notes that for the student's second enrollment, the school did record some FFEL disbursements. *See* ED Ex. 40-25. Additionally, exhibits 187 and 188 contain no documents. Consequently, FSA has failed to meet its burden as to Student Nos. 187 and 188.

stopped attending the school before their loan checks were issued.[63] Additionally, the tribunal is convinced that the signatures on the loan checks for four students were forged.[64] FSA did not, however, convince the tribunal that Teddy Ulmo, and not its "rogue employee" falsified these signatures and, thus, a lesser fine is appropriate. Although the school is accountable for its negligence in failing to supervise an employee who falsifies Title IV documents, it does not necessarily follow that the school forged these signatures. For these 12 students, the evidence reveals that the FFEL funds were not properly disbursed to these students. In determining the amount of the fine, the tribunal notes that six of the 12 students were counted under both portions of this finding. The tribunal will only assess fine amounts for these six students once. Finally, no fine will be assessed based on Student Nos. 187 and 188. Consequently, for purposes of calculating the fine, the number of students whose FFEL loans weren't accounted stands at 70, and a lesser fine of $500 each is appropriate. The fine totals $35,000.

Misrepresentation of Educational Programs

The Secretary may initiate a Subpart G proceeding for any substantial misrepresentation regarding the nature of the school's educational program, its financial charges, or the employability of its graduates. 34 C.F.R. § 668.71(a). Substantial misrepresentations are defined as false, erroneous, or misleading statements on which prospective or enrolled students reasonably relied, or reasonably could be expected to rely, to their detriment. 34 C.F.R. § 668.71(b).

According to FSA, Teddy Ulmo routinely misled students regarding key elements of the school's educational programs and financial charges. First, FSA asserts that the school told prospective students that grants would cover the entire cost of their educational programs, including any necessary equipment.[65] After their enrollments, students would then be required to make significant monthly payments and/or take out a student loan to cover a portion of the expenses. Second, FSA argues that students were misled regarding the assistance the school would provide them in obtaining their GEDs.[66] Third, FSA also claims that students were not provided the equipment and materials necessary to effectively complete their programs of study. FSA argues that many students never received all of the equipment or books they were entitled

[63] Based on FSA's evidence, the tribunal is persuaded that Student Nos. 24, 51, and 111, stopped attending before their loan checks were issued.

[64] These are Student Nos. 64, 111, 135, and 166. For these students, the signatures on the checks in question are markedly different from the students' previous signatures. *See* ED Exs. 64-3 & 31, 111-2 & 25, 135-2 & 22, and 168-2, 18 & 19.

[65] The students identified are Nos. 21, 24, 25, 58, 109, 131, 162, 163, 164, 170, 172, 176, and 178.

[66] The students identified are Nos. 17, 24, 27, 29, 31, 58, 94, 100, 105, 110, 127, 131, 135, 150, 164, and 166.

to receive and/or they received inferior products that needed to be replaced at the students' own additional expense. According to FSA, many students withdrew from the school because they could not afford to buy the equipment and books that should have been provided by the school. FSA proposes a fine in the amount of $20,000 for each of the aforementioned three areas of misrepresentation for a total fine of $60,000.

Teddy Ulmo argues that these allegations are false. The school claims it told students that their Pell Grants would not cover the full tuition amount. Further, the school states that it made arrangements with the Puerto Rico Department of Education for students to take their GEDs, and on many occasions, the students failed to show up for the exam.[67] Teddy Ulmo also argues that it provided a list of equipment and supplies to its students, and that the students were required to sign this list acknowledging receipt of the equipment and supplies.[68] The school acknowledges not giving some students their supplies but asserts that this only occurred when the students' accounts were in arrears.

The tribunal finds that Teddy Ulmo misrepresented the financial charges to its students. It also is evident from the record that some of these students were awarded FFEL loans whose proceeds were never received by the student. Many of these students' records indicate they were placed on a payment plan for tuition and other fees charged by the school. Many of these funds are unaccounted for by the school. As Teddy Ulmo would not apply the appropriate Title IV funds to students' accounts, it is clear they were misled as to the costs they were incurring, and still owing to the school. Consequently, a fine of $20,000 is appropriate.

FSA's second alleged misrepresentation does not form the basis on which a violation may be found. Even if Teddy Ulmo promised to assist its students in their pursuit of GEDs, this promise does not concern the nature of its educational program, its financial charges, or the employability of its graduates. Therefore, no fine is imposed based on FSA's allegation regarding GED tests.

FSA's third allegation states that by Teddy Ulmo's failure to provide the students with sufficient or the correct equipment, supplies, and books, the school's conduct amounts to a misrepresentation. Even if Teddy Ulmo failed to provide its students with sufficient and/or the correct equipment, this failure does not form the basis for a misrepresentation. Here, the quality of the equipment or the failure to supply all of the equipment does not warrant the imposition of a separate fine. The tribunal has already found that the school misrepresented its financial charges regarding its equipment and supplies.

Failure to Maintain Adequate and Auditable Student Records

To begin and continue participation in the Title IV programs, a school must demonstrate that it is capable of adequately administering the Title IV programs in which it participates. 34

[67] *See* Resp. Exs. 36 – 42.

[68] *See* Resp. Exs. 43 – 49.

C.F.R. § 668.16. In order to meet the standards of administrative capability, a school must establish and maintain adequate and auditable student records. 34 C.F.R. §§ 668.16(d) and 668.24. The student records should reflect all program transactions. 34 C.F.R. § 668.24(b). A school must also administer the programs in which it participates with adequate checks and balances in its system of internal controls. 34 C.F.R. § 668.16(c)(1).

FSA argues that Teddy Ulmo maintained inaccurate and incomplete student and payroll ledgers. As noted in other findings, FSA asserts that the school falsely represented FFEL loan proceeds as cash on student ledgers. Additionally, FSA found numerous discrepancies between data submitted to the Department through the Recipient and Federal Management System (RFMS), and the information contained in the payroll and student ledgers given to FSA during its on-site review. FSA also asserts that Teddy Ulmo's lack of a system to maintain its student records easily permitted the school to add and backdate entries at will. According to FSA, this resulted in its reviewers uncovering instances where previous entries on student ledgers were changed when the school provided updated copies. FSA also asserts that Teddy Ulmo failed to provide complete and accurate fiscal records. For example, FSA states that despite repeated requests, the school has failed to provide all of the receipts for the loan and cash payments made to the school as well as the stipend information for all students who received loans. For Teddy Ulmo's alleged failure to maintain adequate records, FSA seeks a fine of $20,000.

Teddy Ulmo admits that that many of the student ledgers and files examined by FSA had discrepancies. According to the school, it discovered that many student ledgers and files had been tampered with, and that the same individual who tampered with the records also committed fraud regarding FFEL loans. The school once again denies it falsified records. The school also argues that it provided the student payrolls and ledgers FSA requested.[69]

Based on the numerous falsifications and inconsistencies demonstrated by FSA, the tribunal finds that Teddy Ulmo has failed to maintain adequate and auditable financial records. To bolster its claim that it did provide the documents FSA requested, Teddy Ulmo submits what it terms as "file copies" of letters stating that the school is submitting the requested documents. Unfortunately, the letters are provided but the documents are not, nor is there any evidence that the letters were, in fact, even sent to the Department. More importantly, the failure to provide the documents FSA requested is only a small portion of this finding. The school does not dispute the more crucial point that the files contained discrepancies. Although the school blames what the tribunal terms as a "rogue employee", it is the school's responsibility to maintain accurate records as well as a system of checks and balances in its internal controls. This tribunal has found that at a minimum, a school's lack of care in supervising a rogue employee is grossly negligent. *See In re Warnborough College*, Docket No. 95-164-ST, U.S. Dep't of Educ. (August 9, 1996). Teddy Ulmo's failure to properly maintain their records so that such a fraud could occur is extremely negligent. Additionally, given that Teddy Ulmo falsified documentation at issue in this proceeding, its argument that the school itself was an unknowing victim of fraud, is hardly compelling. This constitutes a grave violation of the Title IV regulations. The failure to maintain accurate and auditable records goes to whether the school was administratively capable

[69] *See* Resp. Ex. 50 – 53.

of administering the Title IV programs. Additionally, the school's conduct serves as an aggravating factor. The tribunal finds that a fine of $20,000 is appropriate.

Failure to Have Adequate Staff to Ensure Division of Financial Aid Responsibilities

To be considered administratively capable, a school must ensure that it uses an adequate number of qualified individuals to administer the Title IV programs. 34 C.F.R. § 668.14(b). The functions of authorizing Title IV aid and disbursing Title IV funds must be divided so that no one office and/or individual has responsibility for both functions for any particular student. 34 C.F.R. § 668.16(c).

FSA argues that Teddy Ulmo failed to separate the functions of authorizing and disbursing Title IV funds. According to FSA, the school reported that a Mr. Carlos Vazquez was Financial Aid Director but, in actuality, Mr. Vazquez's role in the financial aid process was minimal. Instead, FSA states that a Mr. Ken Lipe performed virtually all the functions related to awarding and disbursing Title IV funds, and when Mr. Lipe left, a Ms. Blanca Colon took over both functions. FSA seeks a fine of $20,000 for the school's alleged blatant disregard of this critical Title IV requirement.

Teddy Ulmo disputes FSA's characterization of Mr. Vazquez's role as minimal, asserting that he has served as the school's Financial Aid Director for 10 years, except for a brief period in late 1998 to the middle of 1999. During Mr. Vazquez's absence, a Mr. Pedro Figueroa was hired as a part-time replacement. The school also argues that Mr. Lipe never disbursed Title IV funds.

It is apparent that the functions of awarding aid and disbursing Title IV funds were not separated at Teddy Ulmo. Although the school never directly denies FSA's allegation that the functions were not separated, its assertion that it did not violate this Title IV requirement is belied by its own admissions. Teddy Ulmo states that Ms. Colon was able to perpetuate many fraudulent acts in processing Title IV funds including altering students' accounts, destroying and/or removing financial aid files, altering or duplicating student payments, deleting student credit balances, and fraudulently obtaining student loan checks. The tribunal cannot imagine a more vivid example of a school's failure to adequately staff and divide the functions of the financial aid process. The nature of the school's violation is grave. Akin to its violation of the 90/10 requirement, and its other violation of the standards of administrative capability, this violation goes to the heart of a school's eligibility for Title IV funds. Consequently, the tribunal finds that a fine of $20,000 is appropriate.

Fine Amounts

In summary, the tribunal's findings and imposed fine amounts are delineated below:

1. Falsification of the 90/10 calculation. Fine Amount: $20,000.

2. Failure to meet the financial responsibility requirements by having as one of its executive officers an individual who had exercised control over another

school that owes a liability to the Department based on Title IV violations. Fine Amount: $27,500.

3. Improperly obtaining additional Pell funds and disbursing FFEL funds in a single disbursement for students who did not complete the requisite clock hours of instruction, and falsification of students' attendance and/or falsification of "make-up hours" of instruction to conceal its improper disbursements. Fine Amount: $115,000.

4. Calculating excess Pell awards (overawards) for students whose programs were less than 600 clock hours, and the falsification of "make-up hours" of instruction to conceal its overawards. Fine Amount: $70,000.

5. Improper retention of Title IV funds by failing to properly calculate and pay refunds, by failing to include FFEL funds in its refund calculation, and falsification of students' regular attendance and/or "make-up hours" of instruction. Fine Amount: $47,000

6. Improper retention of students' credit balances. Fine Amount: $11,000.

7. Disbursing Title IV funds to students who did not have a high school diploma or GED, and who has not passed a valid ability-to-benefit test, and falsification of ATB tests to conceal its disbursement of Title IV funds to ineligible students. Fine Amount: $71,000.

8. Failing to account for Pell drawdowns, and match its drawdowns to its specific disbursements in its payroll ledgers. Fine Amount: $15,000.

9. Failing to account for student's excess loan proceeds by failing to disburse the excess proceeds, and failure to post or otherwise account for these excess loan funds in the students' ledgers. Fine Amount: $35,000.

10. Misrepresenting the school's financial charges to students. Fine Amount: $20,000

11. Failure to maintain adequate and auditable student records. Fine Amount: $20,000.

12. Failure to have sufficient staff to ensure the division of the functions of authorizing payments and disbursing payments. Fine Amount: $20,000

ORDER

On the basis of the foregoing, it is hereby ORDERED that Teddy Ulmo Institute pay to U.S. Department of Education the sum of $471,500.

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Judge Richard I. Slippen

Dated: April 5, 2005

SERVICE

A copy of the attached document was sent to the following:

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