



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

In the Matter of

DEMARGE COLLEGE,

Respondent.

Docket No. 04-39-SP

Federal Student Aid
Proceeding

PRCN: 200230620081

Appearances: Peter S. Leyton, Esq. and Gerald M. Ritzert, Esq., Ritzert & Leyton, P.C., Fairfax, Virginia, for Respondent.

Russell B. Wolf and Steven Z. Finley, Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

DeMarge College (DeMarge) operated as a proprietary institution of higher education in Oklahoma City, Oklahoma, where it maintained two campuses. Until its closure in 2004, 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. § 2751 *et seq.* On July 21, 2004, the Office of Federal Student Aid (FSA) of the U.S. Department of Education (Department) issued a Final Program Review Determination (FPRD) to DeMarge. This FPRD was generated because a March 2004 follow-up review to a 2003 auditor's attestation report raised serious concerns about DeMarge's administration of the federal student aid programs in which it participated. Specifically, the FPRD alleged that DeMarge retained additional Title IV funds to which it was not entitled because it: failed to verify the enrollment status of students before disbursing Title IV funds to them; maintained inaccurate records; and incorrectly calculated refunds. Based on these allegations, FSA seeks to recover \$2,838,445.73. On September 7, 2004, DeMarge exercised its appeals rights under 34 C.F.R. § 668, Subpart H.¹

¹ On September 1, 2006, this case was transferred from Chief Administrative Law Judge Allen C. Lewis to Chief Administrative Judge Ernest C. Canellos.

PROCEDURAL HISTORY

In the FPRD, FSA bases the liability it assesses on three specific findings.² First, it alleges that DeMarge failed to properly determine students' eligibility for Title IV disbursements due to falsification and negligence. As a result, FSA alleges that DeMarge disbursed federal financial aid to students who were ineligible for such funds because they enrolled, but never attended, or withdrew from their program of instruction. Second, FSA alleges that DeMarge maintained inaccurate records due to negligence and intentional falsification and, that as a result, DeMarge improperly increased its eligibility for additional Title IV funds. Third, FSA alleges that DeMarge incorrectly calculated financial aid refunds due to an erroneous calculation methodology and inaccurate attendance records arising, in part, from the falsification of such records. Thus, FSA contends, DeMarge improperly retained additional Title IV funds.

The FPRD was issued following a series of interactions between the Department and DeMarge concerning the school's administration of Title IV funds, beginning with a November 2002 program review report of the 1998-99, 1999-2000, 2000-01, and 2001-02 award years. The Department found DeMarge's response to the report inadequate and ordered the school to secure an auditor's opinion regarding its compliance with Title IV requirements. According to FSA, the auditor submitted an incomplete attestation report because it reviewed only a portion of the student files, rather than all of the files as the Department requested. FSA also asserts that the auditor's attestation report indicated some areas of non-compliance, which became the subject of the March 2004 review at DeMarge on which the FPRD was based.³ In addition to issuing the FPRD in response to the March 2004 review, FSA placed DeMarge on heightened cash monitoring citing concerns that it lacked administrative capability, among other issues. In November 2004, DeMarge ceased all operations.

BURDENS

Before beginning a discussion of the issues in the proceeding, it is important to note the burden that each side bears. In Subpart H proceedings, it is clear that Respondent carries the burden of proof.⁴ To sustain its burden, DeMarge must establish, by a preponderance of the evidence, that the expenditure of Title IV funds was proper.⁵ Conversely, FSA's burden is one of production.⁶

² FSA did not assess liability for findings 1, 2, and 6-12. FSA asserts that because it expects to prevail regarding one or more of the three findings discussed herein, it has chosen not to pursue any liability for findings 1,2, and 6-12. While the tribunal will not delve into the wisdom of FSA's actions, the lack of any assessed liability for these findings renders them beyond the scope of the tribunal's review.

³ The March 2004 review covered award years 1998-2004, but the FPRD does not concern the 2002-03 and 2003-04 award years.

⁴ 34 CFR 668.116(d).

⁵ See In re Euro Hair Design, Dkt. No. 03-95-SA, U.S. Dep't of Educ. (Apr. 8, 2004) (citation omitted); In re Jesode Hatorah, 95-57-SP, U.S. Dep't of Educ. (June 29, 1995).

⁶ In re Sinclair Cmty Coll., Dkt. No. 89-21-S, U.S. Dep't of Educ. (Sept. 26, 1991) 5.

ISSUES

Finding 3: Enrollment Status Not Verified Before Disbursement

Under this finding, FSA asserts that according to the auditor's attestation report, DeMarge disbursed Title IV funds to no-show or cancelled students, and that some of the funds disbursed to these students were not returned. FSA also states that several no-show or cancelled students were absent from the auditor's attestation report. Prior to the FPRD's issuance, in letters dated February 3, 2003, and July 1, 2003, FSA required DeMarge to submit an auditor's attestation report for all students who were no-shows or cancellations for the 1999-00, 2000-01, and 2001-02 award years because it believed that these students received questionable disbursements, given their status.

According to the FPRD, the auditor's attestation report revealed that DeMarge had disbursed funds to students who were ineligible to receive these funds. The FPRD also states that in its March 2004 follow-up review, FSA discovered several no-show or cancelled students who were improperly excluded from the auditor's attestation report. For these reasons, FSA contends that DeMarge's records are inherently unreliable and the auditor's attestation report deficient. Finally, FSA maintains that because an accurate accounting of liabilities cannot be established, this tribunal should find DeMarge liable for all Title IV funds disbursed during these award years, with the exception of those who graduated.⁷

DeMarge argues that it did not intentionally falsify information, and that it owes either no refunds or reduced refunds. Specifically, DeMarge claims that it does not owe Pell Grant refunds for students #24, 25, 27, 38, 41, 42, 43, 48 because the alleged funds were never disbursed to those students.⁸ While DeMarge concedes that it owes \$1,980.74 for FFEL funds to student #24, it provides no supporting documentation for this refund amount. Rather, FSA provides documentation from the National Student Loan Data System (NSLDS) which shows that \$2,042.00 is owed.⁹ DeMarge also claims that students #24 and 42 were properly excluded from the auditor's attestation report because student #24 was on a leave of absence (LOA) and #42 continued to attend despite her reporting to DeMarge's admissions office that she would no longer attend the school.

For student #30, DeMarge asserts that because the disbursed Pell Grant was credited to another student, no refund is owed. DeMarge next asserts that re-enrollment agreements led to FSA's confusion surrounding contradictory attendance records for student #32 and that, as a

⁷ FSA also alleges that DeMarge failed to refund Title IV funds because it did not apply the correct clock to credit hour conversion system under 34 CFR § 668.8(l). However, this allegation did not form the basis for liability under this finding and, thus, is not an issue before this tribunal.

⁸ Although both parties address a Pell Grant disbursed too early to student #50, to which DeMarge concedes, because the student eventually earned all of his financial aid, FSA did not assess any liability for this student in its FPRD. Therefore, this student is not at issue before the tribunal. Additionally, because DeMarge eventually returned the unearned Pell Grant disbursed to student #26, no liability for this student is before the tribunal.

⁹ ED. Ex. 9-4.

result, no refund is owed.¹⁰ Regarding student #40, DeMarge argues that it refunded the Title IV funds drawn down for this student. Finally, DeMarge contends that despite the school's "no show" or "cancel" reports for students #31 and 45, the students attended for several months, as evidenced by the school's attendance records; consequently, only a reduced refund is owed.¹¹ DeMarge asserts that because student #45 continued to attend, he was a "drop" and, thus, was properly excluded from the auditor's attestation report. For the reasons explained below, the evidence leads me to conclude that DeMarge failed to demonstrate that it earned the Title IV funds disbursed for the aforementioned students and that students #24, 42, and 45 were improperly missing from the auditor's attestation report.¹²

Under 34 CFR § 668.22(a), when a student withdraws, the school must refund part or all of the student's Title IV funds based on the student's withdrawal date. Additionally, 34 CFR § 668.22(d) provides that where a student obtains an approved LOA, the school need not count the student as a withdrawal. Therefore, the days during which the student is on a LOA may be counted as days of attendance for purposes of calculating a Title IV refund, unless the student fails to return from the LOA.

Upon review, it is quite apparent that DeMarge failed to calculate and pay refunds for the students contained in this finding and that several of these students were improperly excluded from the auditor's attestation report. First, DeMarge fails to produce any documentation (i.e., bank records, student statements, etc.) supporting its assertions that students # 24, 25, 27, 38, 41, 42, 43, 48 did not receive Pell Grant disbursements. Rather, DeMarge's contentions are belied by unrebutted records from FSA's Common Originating Disbursement (COD) system and the NSLDS, which document each disbursement.¹³ Second, DeMarge fails to present any documentation to sustain its contentions as to students #30, 32, and 40.¹⁴ DeMarge's explanation that the existence of multiple enrollment agreements explains away contradictory school records and a student declaration that DeMarge fabricated a request for a LOA is not persuasive.¹⁵ Third, DeMarge's failure to explain why its records for students #31 and 45 contradict each other, other

¹⁰ Enrollment agreements found at R. Ex. 32-2729, 2768, and 2745.

¹¹ Records for students #31 and 45 are found at ED. Exs. 15 and 24, respectively.

¹² DeMarge did not respond to allegations that students #25 and 41 were improperly excluded from the auditor's attestation report. FSA agrees that students #40 and 43 were properly excluded, but argues that the auditor's conclusion regarding student #43 is incorrect.

¹³ COD and NSLDS disbursements are documented at ED. Ex. 9-7 (student #24); ED. Ex. 10-2 (student #25); ED. Ex. 12-4 (student # 27); ED. Ex. 18-2,4 (student #38); ED. Ex. 21-2 (student # 41); ED. Ex. 22-2 (student #42); ED. Ex. 23-2 (student #43) ED. Ex. 25-2 (student #48).

¹⁴ DeMarge cites a declaration from a former employee that sometimes Title IV funds were transferred to other students, but the only documentation is a note on the bottom of student #30's student ledger that the Pell Grant posted to her ledger was "never posted." This documentation does not support an assertion that the Pell Grant funds were not disbursed. R. Supp. 77-1; 82 ¶ 20. For student #40, DeMarge only presents a school report the funds were refunded, not a bank statement or record from NSLDS or COD that a refund was received. Further, DeMarge's records have proven to be inconsistent and unreliable. R. Ex. 40-3699.

¹⁵ In its initial brief, DeMarge argued that student #32's multiple enrollment agreements provided an explanation for contradictory school attendance records for the period between her first and second enrollment. Further, student #32 gave a declaration that she never requested a LOA, but one appeared in her file with what she stated was her forged signature. ED. Ex. 16- (50-51).

than claiming that only the records supporting longer attendance are accurate, does not demonstrate that these two students earned the Title IV funds disbursed. The record also contains the declarations and statements of three students who stated that DeMarge fabricated, falsified, and/or forged their school records.¹⁶ Indeed, the record is replete with contradictions among the school's own records and many of DeMarge's assertions are both unsupported and undocumented. As a result, DeMarge's claims regarding this finding lack credibility.

Additionally, DeMarge does not point to supporting documentation for its assertion that student #24 was properly excluded from the auditor's attestation report, and its supporting documentation for students #42 and 45 is not reliable. The records and DeMarge's definition of "no show" indicate that student #42 should have been included in the report.¹⁷ Furthermore, DeMarge's attendance records for student #45, purporting to support the student's exclusion from the auditor's attestation report, reflect what the tribunal will characterize as *predicted* attendance for seven weeks because the record was run on 11/26/01, but it showed attendance through 1/18/02.¹⁸ Student #45's attendance record also conflicts with the student's ledger in which she is listed as a "no show." DeMarge does not explain why its projected attendance record is correct; therefore, its claim that the student was properly excluded from the auditor's attestation report is not persuasive. Taken as a whole, the paucity of supporting evidence for DeMarge's assertions regarding the students contained in this finding clearly establishes that it failed to satisfy its burden of proof. Therefore, I find DeMarge liable to the Department for its improper disbursement of Title IV funds under this finding.

Finding 4: Inaccurate Recordkeeping

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 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 also must 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).

Under this finding, FSA alleges that DeMarge maintained records that contained inaccurate information due to DeMarge's negligence and deliberate malfeasance. Specifically, FSA alleges that, *inter alia*, DeMarge falsified students' records in order to increase its eligibility for additional Title IV funds. For that reason, and because FSA concluded that the auditor's attestation report was insufficient, FSA seeks the return of all federal financial aid funds provided

¹⁶ Students # 32 and 43 gave declarations. Student # 41 made a statement to the Department by phone.

¹⁷ DeMarge's attendance record shows that student #42 attended for two days. R. Ex. 42-3935. DeMarge has also stated that a "no show" is a student who attends only a few days then drops. R. Initial Brief at 12. The auditor was to include all no-shows in finding #3. Therefore, it seems that student #42 was improperly excluded from the auditor's attestation report.

¹⁸ ED. Ex. 24-(12-13).

to DeMarge during the 1990-00, 2000-01, and 2001-02 award years, with the exception of funds provided to students who graduated.¹⁹

FSA states that DeMarge was to have an auditor review all Title IV recipients for these award years to determine if they were properly given disbursements. However, FSA asserts that the auditor only provided a sample of 60 students in its attestation and that there were significant error rates in the timeliness of disbursements among these 60 students. Furthermore, according to FSA, it also later determined that DeMarge's records concerning Title IV disbursements to several students were inaccurate, but that these students were absent from the auditor's attestation report.²⁰ For these reasons, FSA argues that DeMarge's records are unreliable.

In response to FSA's allegations, DeMarge claims that students #22, 27, 38 and 39 continued to attend school, despite school records documenting one of the following: the student's withdrawal, drop status, leave of absence status, and/or termination notice for missing too many hours. In support of its claim, DeMarge submits school attendance records for all of the aforementioned students showing perfect attendance for several months at a time during which the students also were reported by the school as not attending.²¹ However, DeMarge offers no explanation as to why the attendance records conflict with the school's other records. For students #22, 27 and 38, DeMarge also claims that the Title IV funds which FSA asserts were disbursed to the students were never actually disbursed or that the funds were transferred to another student. DeMarge does not point to any evidence in the record supporting its claims. Yet, FSA submits documentation from COD and NSLDS which showed that the disbursements were made to students #22, 27, and 38.²²

DeMarge also asserts that while student #39 requested a LOA, she continued to attend after the start date of the LOA and that she received a second disbursement on August 7, 2000, rather than on September 22, 2000, as FSA alleges. Although DeMarge is correct in asserting that 34 CFR § 668.22(d) does not specify that a student must formally rescind a LOA request in writing, the record does not support DeMarge's contention that the student continued to attend despite requesting a LOA. In fact, the student advised a Department representative that she did

¹⁹ FSA calculated the liability by computing the amount of Title IV funds received by the percentage of nongraduates for each of the award years. Ostensibly, FSA excluded funds disbursed to students who graduated based on its conclusion that these funds were not at risk. The tribunal agrees, given that these students apparently received the benefit of the education that DeMarge provided. See In re Macomb Comm. Coll., 91-80-SP, U.S. Dep't of Educ. (May 5, 1993).

²⁰ FSA asserts that students #22, 27, 29, 31, 38, 48, and 51 were improperly excluded from the auditor's attestation report because DeMarge kept inaccurate records for them. DeMarge offers no response regarding students # 29 and 31. As to the others, DeMarge offers no explanation as to why some records for the students are correct but others are incorrect, other than to state that for #27 the records were not updated and for #48 they were not maintained clearly. Due to DeMarge's lack of explanation, this tribunal finds that these students were improperly excluded.

²¹ The relevant records for these students are found at R. Ex. 22-1891 (student #22); R. Ex. 27-(2325-28) (student #27); R. Ex. 38-3495 (student # 38); and R. Ex. 39-(3635-36) (student # 39).

²² See ED. Ex. 7-1 (student #22); ED. Ex. 12-4 (student #27); ED. Ex. 19-2,4 (student #38)

not continue to attend during the period of her requested LOA.²³ Moreover, DeMarge does not point to any other evidence demonstrating that student #39 earned her second disbursement.²⁴

DeMarge also concedes that student #48's (last date of attendance) LDA was in August, despite records reflecting perfect attendance through September; its only explanation for the contradictory records are that they were not "maintained clearly."²⁵ Further, DeMarge asserts that for student #48, a second disbursement was not made, although it did not submit any supporting documentation of its claim. Conversely, FSA submitted documentation showing that the disbursement occurred.²⁶

As for students #29 and 31, DeMarge did not respond to allegations that it improperly disbursed Title IV funds due to conflicting and irreconcilable school records regarding the students' dates of attendance. Finally, DeMarge concedes that it used the wrong LDA for student #51, but that because the student's attendance record of 26 weeks proved that he entered the second payment period, DeMarge owes no liability for him.²⁷ Yet upon review of the attendance records submitted for this student, it is evident that the student attended only 17 weeks. Specifically, the record shows that, of these 17 weeks, 10 were duplicated in DeMarge's records, making it appear that the student attended for 27 weeks.²⁸ What is even more concerning to the tribunal is that the duplicate attendance records show two different sets of classes for the same weeks of attendance.²⁹ Such evidence calls into question the credibility of all of DeMarge's records.

For every student named in this finding, DeMarge's attendance records either were inaccurate, inconsistent, or contradictory.³⁰ Moreover, for almost every student allegation, these questionable attendance records present perfect attendance, which contradict nearly every other record for the students and enable DeMarge to retain additional Title IV funds.³¹ For example,

²³ ED. Ex. 31 ¶ 11.

²⁴ Even if student #39 attended through October 3, 2000, as the school claims, the student's transcript shows that she successfully completed 300 hours. At the 30:1 conversion rate, she completed 10 credit hours for purposes of Title IV funds, short of the 12 hours needed for the next disbursement. R. Ex. 39-3653. However, this transcript is suspect because it does not include any of her classes listed on her attendance sheets for 5/8/00-6/18/00. R. Ex. 39-3636. Nevertheless, DeMarge does not point to any evidence to demonstrate that student #39 earned her second disbursement.

²⁵ R. Ex. 48- (4365-67).

²⁶ ED. Ex. 25-2. DeMarge does concede that it owes \$1,116.00 for the first disbursement.

²⁷ R. Ex. 51-(4678-81).

²⁸ Weeks 3/20; 3/27; 4/3; 4/10; 4/17; 4/24; 5/1; 5/8; 5/15; and 5/22 were duplicated in R. Ex. 51-(4679-81).

²⁹ For example, for week 3/27 on page 4679 of R. Ex. 51, the student is listed as having Nutrition and Intro to Nursing. For the same week on page 4680 of R. Ex. 51, the student is listed as having Nutrition, Intro to Nursing, Anatomy and Physiology, and Fundamentals of Nursing.

³⁰ FSA's allegations concerning students #33 and 49 were withdrawn.

³¹ The supporting records which DeMarge submitted to bolster its assertions that the "perfect" attendance records were the correct records are suspect. The supporting school records consist of LDAs which are consistent with the "perfect" attendance records but which conflict with all of the other LDA records for certain students (students #22, 29, 48). Some of the students' LDAs were altered, without student signature, which made them consistent with the nearly "perfect" records, whereas the original LDA was consistent with other school records reflecting a drop status or termination (student #27, 31). Student #27's records reflect perfect attendance. Student #31's records reflect near

student #39 had perfect attendance during several of the weeks she also was reported as being on a LOA. However, the student gave a declaration that she did not attend during the LOA and that she returned after the LOA for only a few days, not the two months that DeMarge's attendance records reflect.³² Student #38's attendance records also reflect perfect attendance during several of the weeks that she was listed as being on a LOA. By including the additional but unsubstantiated weeks of attendance, DeMarge would be able to retain all of the Title IV funds disbursed.

In the end, DeMarge did not persuade me that its "perfect" attendance records were accurate, in contrast to nearly *all* of the students' other records reflecting withdrawals or LOAs. DeMarge also was unable to demonstrate why the Department's COD and NSLDS records showed disbursements for five students the school claims did not receive disbursements. For these reasons, I find that DeMarge failed to sustain its burden of proof for this finding. In fact, DeMarge's contradictory records concerning student attendance may suggest a purposeful intent by the school to fraudulently draw down and retain Title IV funds to which it was not entitled. At a minimum, the evidence reveals gross negligence in its duty to keep accurate and reliable records.

Finding 5: Refund Calculation Incorrect

DeMarge measures academic progress in credit hours with an academic year of 24 credits and 30 weeks. For a student in a program of one academic year or less in length, the first payment period is the time in which the student successfully completes half of the number of credit hours in the program and half of the number of weeks. 34 CFR § 668.4(c). The second payment period is the time in which the student completes the remainder of the program. 34 CFR § 668.4(c). If the program is more than one academic year, the first payment period is the period of time in which the student successfully completes half of the number of credit hours and weeks in the academic year. 34 CFR § 668.4(c). In order to receive Title IV funds, each of the student's credit hours must include 30 hours of instruction, even if the school would award a credit hour for fewer hours of instruction. 34 CFR § 668.8(1). Thus, a student at DeMarge would finish the first payment period and enter the second payment period for Title IV funds upon completing 12 credit hours and 15 weeks of instruction based on this 30:1 ratio, in other words, after receiving 360 hours of instruction.

Before calculating a refund, a school that measures progress in credit hours, must determine the percentage of a payment period that a student has completed based on calendar days. 34 CFR § 668.22(f)(i). The school must use this percentage to calculate the total amount of Title IV refunds the school must return, if any. If a student completes 60% of the payment period, the school does not owe a refund. 34 CFR § 668.22(e). Therefore, if a student at

perfect attendance. At other times, the students' LOA dates were altered in a way that made them consistent with attendance records, but which conflicted with the dates requested for the LOA by the student, where the alteration was not signed (student #38) or the student testified that the new LOA dates were false (student #39). There is no attendance record for student #51 after the drop notation during the week of 7/24/00, the disputed time period.

³² ED. Ex. 31 ¶ 11.

DeMarge completed 60% of his payment period, or 216 hours of instruction, DeMarge would not owe him a refund of Title IV funds.

Under this finding, FSA alleges that DeMarge improperly retained additional Title IV funds because it based its refund calculations on incorrectly documented LDAs and because it failed to return a refund for a student that never attended. According to FSA, a November 2002 report found that DeMarge often incorrectly calculated its Title IV refunds. Thereafter, FSA required that an auditor review all student files who withdrew, dropped, or were terminated between October 7, 2000, and the date of the program review, to determine whether the calculations were accurate.³³ The auditor's report consisted of an examination of 209 student files from October 7, 2000, to December 31, 2001. FSA contends that not only did the auditor find dozens of deficiencies, but also that the auditor omitted several students from the final report who were owed tuition returns.³⁴

DeMarge contends that student #40 attended for five days and that it returned the Pell Grant money it owed for this student. For students #23, 41, and 43, DeMarge contends that no disbursements were made; yet it agrees to pay \$1,044.85 of the \$1650.00 that FSA alleges was disbursed to student #43. DeMarge also concedes that it owes \$472.39 for student #45 because it incorrectly used days of instruction rather than calendar days to compute the refund. Finally, DeMarge asserts that despite a request for LOAs, students #37 and 38 continued to attend; consequently, student #38 earned his disbursement. Next, DeMarge concedes that it owes a refund for Title IV funds on student #37 based on the percentage of the enrollment period he completed, but it maintains that it already returned this money.

For the following reasons, I find that DeMarge failed to satisfy its burden of proof for this finding. First, DeMarge offers no supporting documentation that it returned any Pell Grant funds disbursed to student #40.³⁵ Also, the attendance record which DeMarge cites as showing that the student attended five days, shows attendance for only one day.³⁶ Second, DeMarge does not point to any evidence in the record supporting its assertions that no disbursements were made to students #23, 43, and 41.³⁷ However, FSA presents documentation from the COD system and NSLDS for each student showing that the disbursements were made.³⁸ Third, the records

³³ The FPRD and the briefs are not specific as to the date of the program review, but FSA does not dispute the review dates of the auditor's report for this finding.

³⁴ FSA argues that students #23, 37, 38, 40, 41, 43, and 45 were improperly excluded from the auditor's attestation report because DeMarge owes them tuition refunds. DeMarge does not respond to this allegation concerning student #23. As for the other students, DeMarge claims that it does not owe them refunds or that it only owes reduced refunds because the funds were either not disbursed, were earned, or were returned. However, as explained under this finding, because DeMarge offers no supporting documentation for these claims, this tribunal finds these students were improperly excluded from the auditor's attestation report.

³⁵ R. Ex. 40-3699 is a school-made report that it would or did return the Pell Grant, not evidence that one was received or sent. Thus, the report is unpersuasive.

³⁶ R. Ex. 40-3796.

³⁷ DeMarge points only to records it created for student #23, which have proven inconsistent and unreliable. R. Ex. 23-1938.

³⁸ ED. Exs. 8-1, 23-1, and 21-2.

surrounding students #37 and 38 are contradictory and suggest either some falsification or improper record keeping by DeMarge.

For student #37, DeMarge presents a record of perfect attendance from 8/20/01-9/24/01. Yet student #37 requested a LOA for medical reasons from 4/03/01-09/24/01, and he told a Department representative by phone that he did not attend during his LOA dates.³⁹ DeMarge also points to two different refund calculations in the record for this student, one which finds that DeMarge owes a reduced refund and one which finds that DeMarge does not owe any refund.⁴⁰ While DeMarge concedes in its reply brief that that the student's LDA was in April 2000, it bases its liability on the calculation showing the student's LDA was in September 2001. Only the calculation using the September LDA shows that DeMarge has a liability, whereas the calculation using the April 2000 LDA shows that DeMarge does not owe a refund. Furthermore, DeMarge asserts that it refunded the Title IV funds, but offers no evidence to support this assertion.⁴¹

The records for student #38 also are inconsistent. DeMarge does not explain why its attendance records contradict the student's LOA request and other school records. Although the student requested an LOA from 9/18/00-10/30/00, DeMarge's attendance records show the student as having perfect attendance from 9/18/00-10/9/00. Yet, for 17 of the 20 weeks she attended prior to 9/18/00, the student missed some class time.⁴² Further, this change in the student's attendance pattern along with other evidence showing the student stopped attending suggests that DeMarge not only kept inaccurate records, but intentionally fabricated students' attendance in order to retain additional Title IV funds.

Further, student #38 requested a LOA because of both a death in the family and her mother's hospitalization.⁴³ However, DeMarge asserts that the student changed her mind and continued to attend. The evidence shows that the date the student requested the LOA was obviously written over, without a signature by the student authorizing the change. Further, DeMarge sent this student a letter of termination on 10/30/00 for excessive absences.⁴⁴ Yet, DeMarge presents to this tribunal a record of perfect attendance for this student for 9/18/00-10/9/00.

CONCLUSION

³⁹ ED. Ex. 31 ¶ 10; ED. Ex. 17-23.

⁴⁰ R. Ex. 37-3328, 3337. Curiously, this student's attendance through September seemingly would permit DeMarge to retain all of the Title IV funds because the student would have completed 60% of the period of enrollment. However, DeMarge does not argue that no liability is owed, but rather concedes some liability.

⁴¹ FSA asserts that student #37 did not enter the second payment period and that a full, rather than a reduced refund is owed, but ED. 17-15 indicates that the student did enter the second payment period. Despite the inconsistency in FSA's assertion, it is apparent that DeMarge would still a refund, albeit for a reduced amount.

⁴² R. Ex. 38-(3491-94). FSA asserts that the student attended 19 weeks prior to 9/18/00, but the record shows 20.

⁴³ ED. Ex. 18-17.

⁴⁴ ED. Ex. 18-16.

In sum, the tribunal finds that DeMarge's records are unreliable and that it failed to sustain its burden of proof for these three findings. In each of the findings discussed herein, DeMarge's claims are unsubstantiated by the evidence, and its own records conflict with each other, with student declarations, and with the Department's databases (NSLDS and COD) showing disbursements on behalf of students that the school claims either did not receive these funds or whose funds were returned. Indeed, several students reported that DeMarge fabricated, falsified, and/or forged their school records. Furthermore, DeMarge's claims regarding its students' attendance are not credible. DeMarge presented records of perfect attendance for students for periods during which the students also were reported by the school as not attending. These inconsistencies reveal DeMarge's gross negligence in recordkeeping, if not deliberate malfeasance. In light of DeMarge's unsupported claims and the unreliability of its records, this tribunal finds that DeMarge has failed to account for its expenditure of Title IV funds for the award years at issue. Consequently, DeMarge is liable for all Title IV funds disbursed to students in the 1999-2002 award years, with the exception of those students who graduated.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is ORDERED that DeMarge College pay to the U.S. Department of Education the sum of \$2,838,445.73.

Ernest C. Canellos
Chief Judge

Dated: July 31, 2009

SERVICE

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

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