



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

In the Matter of

HICKS ACADEMY of BEAUTY CULTURE

Respondent.

Docket No. 05-17-SP

Federal Student Aid
Proceeding

PRCN: 20043032317

Appearances: Dana M. Fallon, Esq., of Ritzert & Leyton, Fairfax, Virginia, for Hicks Academy of Beauty Culture.

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

Before: Richard F. O'Hair, Administrative Judge

DECISION

Hicks Academy of Beauty Culture (Hicks) participates in the various federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the Office of Federal Student Aid (FSA) of the United States Department of Education (Department). In June 2004, FSA conducted a program review of Hicks' administration of the federal student aid programs during the 2001-02 and 2002-03 award years. FSA's Final Program Review Determination, dated January 7, 2005, concluded that Hicks did not comply with program regulations when it offered an ineligible program to its students during the two years under review. As a result of this finding, FSA ordered the return of \$28,630.50 in misspent Title IV funds and Hicks has appealed that determination.

To become eligible to participate in the federal student aid programs, an institution must apply to the Department for a determination that it qualifies as an eligible institution. 34 C.F.R. § 600.20(a). This application must include, among other items, information regarding all locations and educational programs it wishes to be covered by its Title IV eligibility certification. If the institution adds an additional program at a later time, the institution must

apply to the Secretary and request to have that additional program designated as an eligible program. 34 C.F.R. § 600.10(c)(1). There is an exception to this requirement. The institution does not need to apply for secretarial approval if the additional program prepares students for gainful employment in the same or related recognized occupation as an eligible program already designated by the Secretary as an eligible program at that institution. 34 C.F.R. § 600.10(c)(2)(ii). If the institution incorrectly determines that it satisfies this requirement and does not seek secretarial approval for the additional program, it must reimburse the Department for all Title IV funds it received for that program. 34 C.F.R. § 600.10(c)(3).

FSA asserts that at the time of the review, it found that Hicks had received initial approval and had been offering a cosmetology program since 1974, but that in August 2001, it improperly disbursed Title IV funds to students enrolled in a new 630-clock hour Nail Technology Program that had not been approved by the Secretary. Hicks' nail program was approved by its accrediting body on February 8, 2002, and from the state licensing body on June 25, 2002. Hicks then received Departmental approval for the nail program on August 20, 2003, in conjunction with its recertification application. FSA maintains that Hicks should have requested approval to offer the nail program before disbursing Title IV funds in August 2001. Since Hicks did not request prior approval as required under 34 C.F.R. § 600.10(c)(2), FSA argues that all Title IV funds the institution disbursed for students enrolled in the nail program between August 2001 and August 2003 must be returned to the Department.

Hicks insists that it did not need to receive secretarial approval before it began offering its nail program because that program trains students in the same or related recognized occupation as their existing eligible cosmetology program, thereby qualifying it for the exception found in 34 C.F.R. § 600.10(c)(2). In support of this theory Hicks provided a document entitled Classification of Instructional Program Codes that lists both cosmetology and nail technology within the same code heading of 12.04; however Hicks does not provide the source or publisher of this information. Hicks next directs my attention to the U.S. Department of Labor's Dictionary of Occupational Titles which assigns a manicurist to the same occupational group arrangement as a barber and a cosmetologist. According to Hicks, under the dictionary's broad heading of Service Occupations, there is a subheading entitled: Barbering, Cosmetology, and Related Service Occupations that lists the occupations of "manicurist" and "hairdressers and cosmetologists." In that same dictionary, in the section that addresses the duties of "hairdressers and cosmetologists," there is a list of approximately 11 tasks or duties that may be expected to be performed by a hairdresser or cosmetologist. That list of tasks includes "[c]leans, shapes, and polishes fingernails and toenails." Finally, Hicks asserts that the U.S. Census Bureau's categorization of Nail, Hair, and Skin Care Services under the broader occupational category of Personal Care Services also supports its claim that its programs trained students in the same or related occupation.

Hicks argues that although it is required to obtain a separate approval and license from the state and its accrediting agency for both its hair and nail technicians, these requirements do not translate into a finding that the two programs train its students in different, unrelated recognized occupations. The institution maintains that even though the state regulates cosmetology, barber, and nail programs individually, they are still related occupations because

its students all work in the same industry and both nail and cosmetology services can often be obtained in the same location. Hicks also highlights the fact that the program reviewers reported in the FPRD that there were 530 hours of instruction in Hicks' 630-clock hour nail technology program that were common to both programs as further proof these are related occupations.

FSA strongly disagrees with Hicks by maintaining that the cosmetology and nail technician programs do not train students in the same or related occupations. FSA points out that the Department relies heavily on the practices/policies of both the accrediting agencies and the state licensing bodies which have the responsibility to ensure that educational programs they approve train students to obtain gainful employment in the occupational fields for which they are trained. In this case, FSA points out that both Hicks' accrediting agency and state licensing body required separate approvals for the cosmetology program and the nail program, suggesting that this requirement exists because of the difference in the amount of training and skills required for each. FSA also relates that the state requires only 150 hours of instruction for a nail technician license, whereas, it requires 1500 hours of instruction for a cosmetology license.

Despite the conclusions in the FPRD, FSA compared the classes offered by Hicks for each of these programs and concluded there was virtually no overlap of the class components of the two programs. Both programs include an orientation class and a management class. However, the cosmetology classes include: Bacteriology, Properties of the Scalp and Hair, Shampooing and Rinsing, Haircutting, Hair Styling, Permanent Waving, Hair Coloring, Chemical Hair Relaxing & Soft Curt, Wiggery, Manicuring/Pedicuring, Nail and Nail Disorders, and Skin Care. Whereas, the nail technology program includes classes on: Bacteriology/Infections Agent, Sanitation/Disinfections/Safety, Nail Product/Chemistry, Anatomy/Physiology, The Nail and its Disorders, The Skin and its Disorders, Client Consultation, Basic Pedicures, The Art of Nail Technology, Gels, and Creative Touch. FSA concluded there was minimal overlap of the class components of the two programs.

FSA also disputes Hicks' use of the Department of Labor service industry occupational group arrangement to show that the two occupations at issue are related. FSA points out that Section 33 of that occupational group arrangement which addresses Barbering, Cosmetology, and Related Service Occupations, also includes the services of make-up artist, masseurs, embalmers, health club managers, and tattoo artists. FSA does not believe that one could argue that those, too, are occupations so related to Hicks' cosmetology program that if Hicks offered classes in one of these it would not need additional secretarial approval. At best, FSA indicates that if Hicks offered a barbering class, separate approval "would likely not be necessary."

This tribunal has found that 34 C.F.R. § 600.10(c)(2)(ii) requires a close relationship between the newly offered educational program and an existing eligible program, namely that the occupations are the same or similar. *See, In the Matter of Trocaire College*, Dkt. No 02-78-SP, U.S. Dept. of Educ. (April 4, 2003). Although a patron may receive the services of both a cosmetologist and a nail technician in the same locale, and during the same visit, the similarity ends there. An examination of the courses taken by a cosmetology student discloses there is very little overlap, other than the fact that the cosmetology student receives, at best, a rudimentary exposure to the duties of a manicurist while completing the cosmetology program.

The reverse cannot be said about a nail technician student whose program at Hicks includes courses related only to fingernails, and which consists of approximately one-third the number of classroom hours as is required for the cosmetology degree. Additionally, it is very persuasive that both the state and the accrediting agency distinguish these two programs to the degree that each entity requires a separate license/accreditation for each of these two programs. Based on my determination that Hicks' Nail Technology Program does not prepare students for gainful employment in the same or related occupation as the eligible Cosmetology Program, I find that it was required to obtain prior approval from the Department before it disbursed Title IV funds to students enrolled in its nail program. Accordingly, Hicks must reimburse FSA for Title IV funds it disbursed to nail technology students it trained prior to FSA's determination that this program was an eligible program.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Hicks Academy of Beauty Culture must pay to the United States Department of Education \$28, 630.50.

Judge Richard F. O'Hair

Dated: June 13, 2007