



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

In the Matter of

Docket No. 05-33-SA

SHIMER COLLEGE,

Federal Student
Aid Proceeding

Respondent.

Appearances: Eric A. Oesterle, Esq., Sonnenschein Nath & Rosenthal LLP, of Chicago, IL, for Schimer College.

Jennifer L. Woodward, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid.

Before: Chief Administrative Law Judge Allan C. Lewis

DECISION

Schimer College is a small coeducational four-year liberal arts college located in Waukegan, Illinois. Schimer College participates in certain federal student aid programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs), 20 U.S.C. §§ 1070, et. seq.

The Office of Federal Student Aid (FSA) issued a final audit determination on March 30, 2005, in which it determined a liability in the total amount of \$12,561.00 based upon findings five, six, seven, and thirteen. Schimer College appeals these findings. On brief, FSA concedes findings seven and thirteen, leaving findings five and six for resolution below.

In findings five and six, FSA maintains that Schimer College disbursed Title IV funds to two students who were ineligible to receive those funds because they did not possess a high school diploma or its equivalent or pass an ability to benefit test recognized by FSA prior to their receipt of Title IV funds.

Schimer College acknowledges that neither student five nor student six met the eligibility requirement of 34 C.F.R. §§ 668.32(e)(1) and (2)(2002) that a student must have a diploma or its equivalent or have passed a recognized ability to benefit test in order to receive federal program

funds. It urges, however, that the circumstance surrounding the disbursement of the program funds to each student mitigates any recovery by FSA.

As to student five, Shimer College maintains that it relied upon the student's PSAT score included in his application and assurances from the student and his parents that he took and passed a test for admittance to a local community college. In addition, Shimer College requested an ability to benefit test from the student; however, it cannot locate a copy of that test or the results in its records. With respect to student six, Shimer indicates that she took and passed an ability to benefit test at an off-site neutral testing site that represented it was administering an approved test. Unfortunately, the test was not on FSA's approved list. Finally, Shimer College notes that each student performed well, stayed in school, and obtained an undergraduate degree; that it has taken action to prevent such occurrences in the future; and that these incidences reflect honest mistakes.

Sections 668.32(e)(1) and (2) of 34 C.F.R. impose an eligibility requirement to receive federal program funds, namely, that a student possess a high school diploma or its equivalent or pass a recognized ability to benefit test. While Shimer presents a case to relax the eligibility requirement, this is a strict criterion. In re Pan American School, Dkt. No. 91-94-SA, U.S. Dept. of Education (Sec. Dec. Jan. 12, 1995) (ineligibility to receive assistance is not cured by the graduation of a student); In re Umpqua Community College, Dkt. No. 96-159-SP, U.S. Dept. of Education (Aug. 7, 1997) (completion of the academic program does not mitigate the award of assistance to a student who was ineligible to receive such assistance). Accordingly, Shimer is liable in the amount of \$5,244.66 under findings five and six.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Shimer College pay to the United States Department of Education the sum of \$5,244.66.

Allan C. Lewis
Chief Administrative Law Judge

Dated: September 23, 2005

SERVICE

A copy of the attached decision was sent on September 23, 2005, by certified mail, return receipt requested to the following:

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A copy of the attached decision was also sent by mail on September 23, 2005, to--

Nancy I. Hoglund, Supervisor
Debt Management Group
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