



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

In the Matter of

SHAW UNIVERSITY,

Respondent.

Docket No. 05-48-SP

Federal Student
Aid Proceeding

PRCN: 200330421634

Appearances: William A. Blakey, Esq., Washington, D.C., for Shaw University.

Russell B. Wolff, Esq., of the Office of the General Counsel, United States
Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Shaw University (Shaw) is a degree-granting institution of higher education located in Raleigh, North Carolina. It is accredited by the Southern Association of Colleges and Schools, and is eligible to participate in the various Federal Student Aid Programs that are authorized by 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.* Within the U. S. Department of Education (ED), the Office of Federal Student Aid (FSA) is the organization that has cognizance over and administers these programs.

During the period of May 12-16, 2003, Institutional Reviewers from FSA's Atlanta Case Management Team conducted a program review at Shaw that examined its administration of the Title IV programs. Included was an in-depth review and analysis of Shaw's Title IV policies and procedures, as well as a review of a statistically significant sample of academic and student financial assistance files for the 2000/01, 2001/02 and 2002/03 award years. The Acting Director of the Atlanta Case Management Team issued a final program review report on January 8, 2004. This report detailed major problems with Shaw's verification policies and procedures that had been uncovered during the on-site review.¹ Because of the extent of these findings,

¹ Pursuant to Subpart E, 34 C.F.R. § 668.51 *et seq.*, an institution is required to verify certain

Shaw was required to perform a full file review of all Title IV eligible students who were selected for verification in the 2000/01, 2001/02 and 2002/03 award years to identify all students for whom either verification had not been accomplished correctly or had not been accomplished at all. Shaw dutifully complied and filed a report of its findings. After it reviewed Shaw's submission, on May 20, 2005, FSA issued a Final Program Review Determination (FPRD). As pertinent to the issue before me, FSA determined that based on the information provided by Shaw during the belated verification process for the three award years in issue: (a) it needed to recalculate the respective Title IV entitlements for 205 students and (b) the verification for another 673 students could not be fully accomplished by Shaw. As a consequence of these two findings, FSA ordered Shaw to return \$2,190,721 to ED. Shaw's appeal of those determinations, dated July 8, 2005, is the subject of this proceeding.

The pertinent facts of this case are not complicated and, in fact, are not even contested. Pursuant to the provisions of 34 C.F.R. § 668.53, eligible institutions are required to establish written policies for verifying information contained in student aid applications. During the program review, FSA determined that Shaw's written procedures were inadequate.² As an apparent consequence of its faulty procedures, Shaw failed to properly satisfy the requirement to verify an appropriate number of student aid applications. Shaw erroneously concluded that it was only required to verify 95 student applications for the 2002/03 award year, when the minimum number that was required to be verified was 590. This larger figure was calculated by applying the 30% verification limitation that is provided in 34 C.F.R. § 668.54 to the 1,967 students who were enrolled and had applied for federal student aid during the 2002/03-award year.³ Since a similar failure was uncovered for each of the award years under review, FSA required Shaw to accomplish a full file review of all student files selected for verification during each award year in question. In due course, the FPRD was issued seeking the return of all Title IV funds disbursed to students whose files were either not properly verified or not verified at all, as is indicated above.

In its appeal, Shaw acknowledges that its policies and procedures relative to verification were "not up to standard," but argues that FSA's demand is excessive. It argues that demanding the return of all the federal aid disbursed to the students who were not properly verified equated

information submitted by a student applying for federal student aid that is used to determine the applicant's Expected Family Contribution (EFC). Included is: household size, number of students in college, adjusted gross income, taxes paid, and untaxed income and benefits. If, during this verification process contradictory information is received, the institution is required to resolve any and all of the discrepancies.

² Shaw's amended procedures have been reviewed and, as indicated in the FPRD, FSA now finds that these procedures satisfy the regulatory requirements for verifying pertinent student aid information.

³ 34 C.F.R. § 668.53 provides that applications may be selected for verification by either ED's Central Processing System (CPS) or by the institution. The institution is entitled to limit those selected by the CPS to 30% of the students applying for federal student aid in any award year.

to the application of a 100% error rate. Stated another way, Shaw argues that FSA's demand assumes that all aid given to those students was improper -- in reality, however, it is patently clear that that is not so. Further, Shaw points out that it has restructured its staff, hired professionals to handle student aid, and redone its practices and procedures. Further, it offers to settle the FPRD by paying \$653,245 to ED, claiming it to be a more representative figure of the losses occasioned by the Title IV programs.

In its responsive brief, FSA rejects Shaw's offer of settlement and argues that there is no basis in law to reduce Shaw's liability in this case. It argues that past precedents require that all federal student aid disbursed to students whose aid was not properly verified, as required, must be returned. *See, In re Livingston College*, Docket No. 02-80-SA, U.S. Dep't of Educ. (April 29, 2004). *See also, In re Chattahoochee Technical Institute*, Docket No. 97-46-SP, U.S. Dep't of Educ. (Secretarial Decision) (June 23, 1999). To accentuate its position, FSA citing to *In re Davenport Barber Styling College*, Docket No. 04-26-SP, U.S. Dep't of Educ. (October 28, 2005), points out that Shaw acts as a fiduciary when it deals with federal student aid funds and, as such, is required to return all such funds that it can not establish were properly expended.

In considering this issue, I begin by noting that this proceeding is governed by regulations promulgated under Subpart H of the general provisions. 34 C.F.R. Part 668. It is well established that in a Subpart H -- audit and program review proceeding, the institution possesses the burden of proving by a preponderance of the evidence that the Title IV funds in issue were lawfully disbursed. In accordance with 34 C.F.R. § 668.116(d), to sustain its burden, the institution must establish, that (1) the questioned expenditures were proper and (2) the institution complied with program requirements.

After reviewing the record before me, I find that Shaw has failed to live up to its fiduciary responsibilities in the manner in which it carried the verification of the personal data of a number of students, as required by 34 C.F.R. § 668.51 *et seq.* I further find that, as a result, Shaw must return \$2,190,7212 to ED.

Although it is possible, if not probable, that some of the funds at issue were correctly expended, Shaw has failed to present any evidence or a basis upon which I can determine, with any degree of assurance, what portion of FSA's demand fits into this category. It would impermissibly reverse the established burden of proof if I were to relieve Shaw of its liability under the circumstances. As a general rule, I am required to follow the regulations and do not have the authority to either waive them or rule them to be invalid. *See* 34 C.F.R. § 668.117 (d).⁴

⁴ In accordance with the provisions of 34 C.F.R. § 668.118, I am charged with the obligation to determine whether the evidence of record supports FSA's Final Program Review Determination in whole or in part and to issue a decision accordingly. I do not possess the plenary authority to decide this appeal on any other basis.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Shaw University pay to the United States Department of Education the sum of \$2,190,721, for its failure to properly verify the personal information of students, as it was required to do.

Ernest C. Canellos
Chief Judge

Dated: May 2, 2006

SERVICE

A copy of the attached decision was sent to the following individuals by certified mail:

William A. Blakey, Esq.
Suite 400
1101 Vermont Avenue, N.W.
Washington, D. C. 2005

Russell B. Wolff, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110