



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

In the Matter of

**GIBSON'S BARBER
and BEAUTY COLLEGE,**

Respondent.

Docket No. 05-49-SA

Federal Student Aid
Proceeding
ACN: 04-2002-43131

Appearances: Evelyn G. Gibson, for Gibson's Barber and Beauty College, West Point
Mississippi.

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

Before: Richard F. O'Hair, Administrative Judge

DECISION

Gibson's Barber and Beauty College (Gibson), operates a trade school in West Point, Mississippi, which participates in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV, HEA), as amended. 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Office of Federal Student Aid (FSA), U.S. Department of Education (ED), administers these programs. On June 17, 2005, FSA issued a Final Audit Determination (FAD) in which it sought the return of \$186,958 in federal funds from Gibson because of alleged regulatory violations of its administration of its federal student aid programs. Gibson has appealed this finding.

The June 17, 2005, FAD reports that an examination of Gibson's annual compliance audit for the period January 1, 2002 through December 31, 2002, indicates that Gibson violated the 90/10 rule by deriving 92 percent of its revenue from Title IV sources for the year in question. The FAD concluded that because of this violation, Gibson was not eligible for the Title IV funds

it received the following fiscal year, January 1, 2003 through December 31, 2003. Accordingly, FSA demanded the repayment of all such funds received for that fiscal year, \$186,958.

The 90/10 rule provides that to be eligible to participate in the Title IV programs, a school must derive no more than 90 percent of its revenues from Title IV funds, and conversely, it must receive no less than 10 percent of its revenue from tuition, fees, and other institutional charges for students enrolled in eligible programs. 34 C.F.R. § 600.5(a)(8) and (d)(1). If the institution's Title IV revenues are greater than 90 percent, the school must notify ED of this fact within 90 days of the end of the fiscal year, and it becomes ineligible to participate in the Title IV programs for the following year. 34 C.F.R. § 600.5(f) and (g).¹

Gibson appealed the FAD by explaining that in fiscal years both before and after 2002, it satisfied the 90/10 rule. It further explained that the school's owner, Mrs. Evelyn Gibson, loaned \$3,850 to the institution in 2002 and the latter had repaid only \$500 at the time of the 2004 audit. Gibson's auditor reported that the "remaining balance will be donated to the school which will increase the total school revenue for 2002 by \$3,350." Gibson asks that this donation be treated as income and in doing so, this will lower the percentage of income the school received from Title IV sources from 92 percent to 90 percent, thus bringing it into compliance with the 90/10 rule.

Unfortunately, this donation cannot be treated as income, and so Gibson's argument fails. Forgiveness of the \$3,350 loan does not qualify as revenue that, as defined by the regulation, has been restricted to include only tuition, fees, and other institutional charges for students. Additionally, even if the regulation permitted loan forgiveness to be treated as income under the 90/10 rule, it still would not benefit Gibson in this scenario because the forgiveness occurred after the close of the 2002 fiscal year. Since the regulations require this calculation be performed using the cash basis of accounting, this loan forgiveness must be considered to have occurred in another fiscal year. 34 C.F.R. § 600.5(d)(2).²

In a second submission to this tribunal, dated November 14, 2005, Gibson requests that clemency be extended to it because it is a small school which provides necessary training opportunities to poor and minority students. Gibson says that if it is required to reimburse ED in the claimed amount, it will be forced to increase its tuition for a potential student body that cannot afford such an increase, and this may ultimately result in the school's closure.

Gibson has the burden of proving the school satisfied the 90/10 rule for the 2002 fiscal year. 34 C.F.R. 668.116(d). Unfortunately the governing regulations do not give Gibson the latitude to include in its revenue column funds that are classified as donations or forgiveness of

¹ See generally, *In the Matter of Pacific Travel Trade School*, Dkt. No. 00-55-SA, U.S. Dep't of Educ. (Jan. 24, 2002).

² A school that uses cash basis accounting reports revenue on the date that the revenue was actually received. See 34 C.F.R. § 600.5(d)(3). Gibson did not receive loan forgiveness on its loan debt until some time after the completion of its 2004 audit. Thus, in 2002, the loan at issue was a liability owed by the school, and not income.

debts to the college. Therefore, because Gibson was ineligible to receive Title IV funds for fiscal year 2003, all Title IV funds received for this year must be returned.³ Accordingly, I must find that Gibson remains liable for the \$186,958 in Title IV funds it received in 2003.⁴

ORDER

On the basis of the foregoing, it is hereby ORDERED that Gibson's Barber and Beauty College pay to the U.S. Department of Education the sum of \$186,958.

Judge Richard F. O'Hair

Dated: November 23, 2005

³ Apparently Gibson was late in submitting its 2002 audit. Perhaps a timely submission may have alerted the parties to the ineligibility issue and spared Gibson of the pending financial obligation.

⁴ No matter how deserving, only the Secretary has plenary authority to mitigate this conclusion.

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

Ms. Evelyn Gibson
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