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

In the Matter of	**Docket No. 06-21-SP**
INTERNATIONAL RENOWNED BEAUTY ACADEMY,	Federal Student Aid Proceeding
Respondent.	PRCN: 200420622914

Appearances: Samuel A. McSwain, President and CEO, Fort Worth, Texas, for International Renowned Beauty Academy.

Denise Morelli, 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

International Renowned Beauty Academy (International), located in Fort Worth, Texas, is a proprietary post secondary educational institution that provides programs of study in cosmetology. It is licensed by the Texas Cosmetology Commission, is accredited by the National Accrediting Commission of Cosmetology and Sciences and is eligible to participate in the Pell Grant Federal Student Aid Program 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 this program.

From March 29 through April 1, 2004, Institutional Review Specialists from FSA's Dallas Case Management Team conducted an on-site program review of International's administration of the Pell Grant program for award years 2002–2003, and 2003–2004. On November 30, 2004, the Area Case Director of the Dallas Team issued a final program review report citing a number of violations of regulations uncovered during the site visit. Subsequently, International took some corrective actions and provided additional information to FSA. As a

consequence, and under authority of Subpart H, 34 C.F.R. § 668.111 *et seq.*, on May 5, 2006, FSA issued a Final Program Review Determination (FPRD) in which it dismissed five of the findings in the program review report, affirmed ten other findings of that report, and demanded that International return $162,997.00 to ED.

FSA's demand was based on nine actionable findings out of the ten approved findings. First, FSA determined that International failed to verify completely certain required information used in determining students' entitlement to federal financial assistance. For the 33 students included in this category, $99,003.00 in Pell Grant funds was allegedly erroneously disbursed. The second finding involved an allegation that 18 students were disbursed Pell Grant aid despite the fact that inconsistent information appeared in those students' applications for federal student aid and those inconsistencies allegedly were not resolved, as required. For this violation, FSA demanded the return of $40,538.00. Other findings of alleged improper disbursements included: ineligible students, ineligible citizenship status, missing selective service registration, previous default of a Title IV loan, and assorted incorrect calculations of Title IV aid. These other findings resulted in an FSA demand for return of an additional $30,126.00. In calculating the total demand it was asserting for all the violations, FSA determined that several students were included in more than one of the findings and, as a result, such student aid was being counted more than once. After making an adjustment for such situations, FSA demanded that International return $162,997.00 to ED.[1]

On June 5, 2006, International exercised its rights and appealed the demand in the FPRD. In such appeal, International claims that it resolved all the alleged violations in the demand with the exception of $48,311.00, which it offered to repay over a twelve-month period. On June 22, 2006, I was assigned to adjudicate this matter. I ordered the parties to submit their briefs and evidence on a prescribed schedule. On July 24, 2006, International submitted its filing in which it explained that it attempted to comply with ED regulations but, through inexperience, it made mistakes. Further, it committed to improve its performance in the future. Between April 31, 2006, and February 5, 2008, I stayed the proceedings at the parties' joint request to allow them an opportunity to negotiate a settlement of the matter. On the latter date, I reinstituted the briefing schedule upon the parties' notification of their inability to arrive at such a settlement.

I begin my consideration by noting that this proceeding is governed by regulations promulgated under Subpart H of the general provisions. It is well established that in a Subpart H -- audit and program review proceeding, the institution carries 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, an institution must establish through the submission of credible evidence, that (1) the questioned expenditures were proper and (2) the institution complied with program requirements. I will discuss the alleged violations remaining in issue, seriatim.

[1] A review of the case file indicates that International did not appeal findings 4, 5, 6, 7, and 8 of the FPRD. As a consequence, the $30,047.00 demanded in those findings is not before me in this appeal and may be, otherwise, collected.

First, FSA alleged that International failed to completely verify student information on their applications for student aid, when such verification was required. *See,* 34 C.F.R § 668.51. For the 33 students in this category, $99,003.00 was allegedly erroneously awarded and must be returned. In its appeal, International claimed, without providing any evidence to support such claim, that it verified the students' information in all cases except three. FSA reviewed and investigated that claim and determined that none of the students' information was properly verified and provided an attestation from the staff member who inquired into that issue, to that effect. In addition, International claimed, without the tender of any evidence, that it had paid the liability for some of the students in the finding – again, FSA disputed that claim and provided an attestation to that effect. Therefore, as to this finding, I have determined that International has failed to satisfy its burden of proof and persuasion and, as a consequence, must return $99,003.00 to ED.

Second, FSA alleged that International failed to resolve conflicting information it had received from various sources with respect to 18 students' applications for Title IV funds. *See,* 34 C.F.R. § 668.16(f). For the finding, FSA demanded the return of $40,538.00, however, during the course of this proceeding, International was able to resolved this issue for eight of the students, resulting in a reduced demand of $23,800.00 for this finding. In its brief, International claimed, without a tender of any relevant evidence, that it had provided the information necessary to resolve the rest of the finding. However, as it did with regard to the prior finding, FSA inquired into such assertion and provided an attestation to the effect that there was no information presented that could resolve this issue as to any other students. Therefore, as to this finding, I find that International failed to meet its burden of proof and persuasion and must return $23,800.00 to ED.

Third, once a student's Title IV entitlement is established, funds are disbursed to that student incrementally and on a mandated schedule. *See,* 34 C.F.R. § 668.4(c). During the program review, it was determined that a number of students had been disbursed their Title IV payments earlier than authorized. In cases where it was determined that a student eventually attained the time at which payment would be authorized, no demand for return of funds was made. Despite this exception, a number of students received early payments with no evidence that they ever reached the time when they became entitled to the federal aid. The FPRD assessed $7,300.00 in liability for this finding, however, that amount was reduced to $4,050.00, because of double counting, as described above. Although International claims that it resolved the entire issue, it does so once again, without an offer of proof. Consequently, I find that International failed to meet its respective burdens of proof and, therefore, must return $4,050.00 to ED for this finding.

Fourth, regulations require that prescribed formulas must be utilized in calculating the Title IV aid due to a student for each payment period. *See,* 34 C.F.R. § 690.63. During the program review and subsequent full file review, it was discovered and the FPRD determined that five students were overawarded a total of $11,753.00. Because of double counting, this amount was reduced to a demand for the return of $5,064.00. International agrees as to three of the students, however, it claims, without the tender of proof, that the other two students' awards

were correct. I find that International has failed to meet its prescribed burden of proof as to this finding and must return $5,064.00 to ED, therefore.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is ORDERED that International Renowned Beauty Academy pay to the U. S. Department of Education $131,917.00, as enumerated in the operative paragraphs first through fourth, above.

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Ernest C. Canellos
Chief Judge

Dated: July 28, 2008

SERVICE

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

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