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

In the Matter of	**Docket No. 06-51-SP**
DU QUOIN BEAUTY COLLEGE,	Federal Student Aid Proceeding
Respondent.	PRCN: 200530524174

Appearances: H. D. Allen, President, DuQuoin, Illinois, for DuQuoin Beauty College.

Jennifer L. Woodward, 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

DuQuoin Beauty College (DQ), located in DuQuoin, Illinois, operated as a proprietary postsecondary educational institution providing certificate programs of study in cosmetology. It was accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and was eligible to participate in the Federal Pell Grant and SEOG programs 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.

From May 2 through May 5, 2005, Institutional Review Specialists from FSA's Chicago School Participation Team conducted an on-site program review of DQ's administration of the Title IV programs for award years 2002–2003, 2003–2004 and 2004-2005. On June 28, 2005, a final program review report was issued citing a number of violations of regulations uncovered during the site visit.[1] Subsequently, DQ provided additional information to FSA. After having

[1] Separately, FSA served a notice of its intent to terminate DQ's eligibility to participate in Title IV programs on February 16, 2006. DQ didn't appeal and the termination became effective then.

considered such information, and under the authority of Subpart H, 34 C.F.R. § 668.111 *et seq.*, on September 8, 2006, the Team Leader of the Chicago School Participation Team issued a Final Program Review Determination (FPRD) that resulted in the dismissal of some of the findings in the program review report, affirmance of other findings of that report, and the demand that DQ return $405,030.00 to ED.

FSA's demand in the FPRD was based on six actionable findings. The major finding, labeled Finding A, alleged that DQ failed to satisfy the statutorily mandated 90:10 rule in violation of 20 U.S.C. § 1002(b)(1)(F). This provision requires that no more than 90% of a proprietary school's revenues can come from sources derived from Title IV funds. Institutions are required to calculate their percentages on an annual basis and report their rates in their financial statements. If an institution's rate exceeds the 90% mandated rate, the institution becomes ineligible to participate in Title IV programs effective December 31st of that year. *See*, 34 C.F.R. § 600.40(a)(2). As a consequence of such loss of eligibility, the institution must immediately cease awarding Title IV funds. 34 C.F.R. § 668.26.

As an integral part of its program review, FSA reviewers examined the audited financial statements filed by DQ for the fiscal year ending on December 31, 2003. DQ reported the school's revenue from Title IV sources as 84% for that year, however, when that figure was recalculated on the basis of validated data; the correct rate was 95.4%.[2] The FPRD determined that, in spite of its status as ineligible to participate in Title IV programs effective on December 31, 2003, DQ erroneously continued to draw down and award Title IV funds and must now return $379,660.80 for that violation.[3]

In the next finding, labeled Finding 1, the FPRD determined that DQ made incorrect Pell Grant payments across award years to 36 students and must return $15,843.28 for those erroneous payments. Further, the FPRD determined that DQ failed to verify the eligibility of one student, as required, and must return $4,244.49 for such violation (Finding 5), and failed to properly credit a student's account in the amount of $1,012.00 (Finding 10). In all of the findings subsequent to Finding A, FSA, prior to its making its demand for the return of Title IV federal funds allegedly misspent, assured that its demand did not include amounts that were to be, otherwise, returned pursuant to Finding A.[4]

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[2] The audited financial statements reported the figure as 84%; however, the auditor included a disclaimer based on his inability to form an opinion on the correctness of some of the revenue amounts used in the calculation. The figure was recalculated after review of the auditor's work papers and validation of the figures in the numerator and denominator of the equations.

[3] In her brief, Counsel for FSA sets the amount for Finding A at $384,795.80, yet my review of the FPRD shows the figure to be $379,660.80.

[4] The FPRD also determined that DQ incorrectly calculated refunds to students and must return $106.52 for a student who was underpaid (Finding 3). Within the same finding, FSA found that DQ had overpaid refunds for 26 students, totaling over $6,000.00. Also, DQ allegedly disbursed $20.07, to a student deemed to be ineligible because DQ failed to verify her citizenship status, as required (Finding 4). In the context of this appeal, with the recovery for some findings subsumed in an overarching finding, I consider these findings to be *de minimis* -- I will not address them.

In an undated letter, received by FSA on November 6, 2006, DQ exercised its rights and appealed the demand in the FPRD, and on December 8, 2006, I was assigned to adjudicate this matter. I ordered the parties to submit their briefs and evidence on a prescribed schedule and, in due course after a number of extensions, the parties complied.

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 relevant and credible evidence, that (1) the questioned expenditures were proper and (2) the institution complied with program requirements.

As an initial observation, my review of the record in this case indicates that, although DQ might have intended to appeal all of the findings in the FPRD, it failed to provide any evidence to rebut FSA's allegation as to the 90:10 violation as enumerated in Finding A. In fact, DQ does not even mention or allude to Finding A in its appeal. Also, DQ offered no evidence to rebut FSA's allegation on the finding relative to the erroneous payments across award years and, in fact, agreed in its brief that it owed the claimed amount for that violation. Regardless, I have examined the record and have determined that FSA has presented clear and unrebutted evidence of DQ's culpability as to these two findings. Therefore, I find that DQ failed to meet its burden of proof as to those issues and owes $379,660.80, for Finding A and $15,843.28, for Finding 1.

In its overall defense of the allegations included in this proceeding, DQ pointed out that it had been in business for over 36 years. It had a yearly audit by its C.P.A, and had two visits by its accrediting body, yet it was never informed of the types of mistakes that it allegedly made. Also, DQ had $52,000.00 due to them from FSA at the time of their funds cut-off, inferentially arguing that amount should be considered as a set-off to FSA's demand.[5] The file also indicated that DQ closed several months before January 19, 2007, the date it filed a Motion for Continuance of the briefing schedule before me.

The first substantive dispute between the parties involves Finding 5 of the FPRD. There, FSA alleges that DQ failed to properly verify information provided by Student 15 in her application for federal financial assistance, as required by 34 C.F.R. § 668.54(a)(2)(i). FSA's evidence reveals that Student 15's application was selected for verification by FSA. Once selected for verification, regulations dictate which items need to be verified, 34 C.F.R. § 668.56, and what documentation satisfies the verification requirement. 34 C.F.R. § 668.57. Also implicated in the verification issue is 34 C.F.R. §668.16(f) that requires schools to resolve all discrepancies in the information it receives relative to a student's application for federal aid. In the case of Student 15, the dispute revolves around the income data required to be submitted by a student to establish how much estimated family contribution (EFC) would be available. Student 15 and her spouse jointly filed their federal income tax return in 2002 in which they reported joint income of $53,144.00. However, in July, 2003 the couple reportedly separated and, as a

[5] I have no jurisdictional basis to consider any claims other than the demand in the FPRD.

consequence, the question of how much EFC would be available to support the student while she was a student changed. Both DQ and FSA are in agreement, that as a separated individual, only the student's income should be considered in determining the EFC. DQ asserts that her income was $3,510.00 for 2002 and points to a Federal Return Recap as evidence of such a claim. However, FSA points out that the Recap form contains three additional income figures: $1,476.00, $1,106.00 and $46,876.00. Although the $3,510.00 figure is circled on the Recap form and DQ in its appeal claims that figure was the only one earned by the student, there is no documentation establishing to whom each of these income figures was attributable.

My review reveals that the Federal Return Recap form cited above does contain four separate income figures and that none of them is specifically allocated to one of the joint filers. The form is unsigned and there is no other signed statement from the student in the file that clarifies this situation. Finally, the record does not contain a copy of the couple's federal tax return from 2002. Given the paucity of evidence of the student's EFC, I find that DQ has failed to satisfy its prescribed burden of proof as to this verification issue and, as a result, must return a total of $4,244.49 for this violation.

Next, the parties dispute the demand for the return of $1,012.00 as enumerated in Finding 10 of the FPRD. Specifically, FSA claimed that DQ drew down $1,012.00, in the name of a particular student; however, upon examination of that student's account card that amount had not been credited to her account. As part of its brief, DQ provided an updated account card indicating that the amount in issue had been credited to the student. Although FSA disputes the accuracy of the updated card, and DQ's veracity, I need not decide this conflict because I find the issue is moot -- FSA admits that the amount in issue has been subsumed in its claim under Finding A. I will, therefore, not include this amount in my final award.

In summary, I find that DQ has failed to meet its prescribed burden of proof as follows:

Findings: A. $379,660.80
1. $15,843.28
5. $4,244.49

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is ORDERED that DuQuoin Beauty College pay to the U. S. Department of Education a total of $399,748.57, for the findings enumerated above.

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Ernest C. Canellos
Chief Judge

Dated: May 14, 2009

SERVICE

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

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