



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

In the Matter of

Docket No. 08-36-SA

**QUALITY COLLEGE OF
CULINARY CAREERS,**

Federal Student Aid
Proceeding

Respondent.

ACN: 09-2007-71936

Appearances: Lonney Edwards, of Fresno, California, former CEO, for Quality College of Culinary Careers.

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 UPON REMAND

On November 25, 2009, the Secretary remanded the above-titled proceeding to me to determine whether and to what extent the Heightened Cash Monitoring (HCM2) process may reduce the liability resulting from the failure of Quality College of Culinary Careers (QCCC) to file a close-out audit, as required. On June 10, 2009, I had issued a Decision in which I found that even though it was subject to the HCM2 process at the time, QCCC failed to submit the required close-out audit, and as a result, must return all the Title IV funds it had received between its last audited period and the date of its closing. As part of his remand, the Secretary ordered that both parties submit to me a joint stipulation regarding this issue. On December 3, 2009, I issued an order tasking the parties to consult and submit the envisioned stipulation by January 15, 2010. Upon the parties' notification of their apparent inability to agree to the stipulation, on February 1, 2010, I further ordered the parties to each file a brief by March 5, 2010, enumerating their respective positions on this issue, which they did.

The underlying statutory scheme that is designed to protect federal student aid funds is based on the fact that schools eligible to participate in Title IV programs serve as fiduciaries as to those funds with all the responsibilities that are attendant to that status. Further, it is the

responsibility of ED as the provider of those federal education funds to assure that Title IV funds are properly disbursed to eligible students. Consistent therewith and as pertinent to the issues before me, current law provides that when an eligible institution closes, it must arrange for a close-out audit covering the period of time between the periods encompassed by its last audit and the date it ceases to participate in the federal student aid programs.

In its March 5, 2010 submission, ED's office of Federal Student Aid (FSA) posited essentially that the HCM2 process includes only a limited review of selected documents submitted by a school whereas a close-out audit must be performed by an authorized auditor and must satisfy the expansive oversight requirements laid out in the 132-page Audit Guide and is clearly, not a substitute. As a consequence, FSA argued that the close-out audits are crucial to ED's ability to ensure that schools properly account for Title IV funds they received and that failure to provide a close-out audit has previously been held to constitute *ipso facto* evidence of the failure to account for such funds. In addition, as an attachment, FSA included a copy of its formatted letter to QCCC approving its requests under the HCM2 process for the payment of Pell Grants -- that approval letter specifies quite clearly that the review accomplished under HCM2 processing does not relieve the institution of its, otherwise, audit requirements.

Throughout the matriculation of this case, I have noted that QCCC has consistently raised a number of arguments in defense of its actions. In its most recent submission, dated March 1, 2010, QCCC continues by claiming that its failure to submit a close-out audit was caused by the business losses occasioned by FSA's previous cutting off of funds; there was no evidence of fraud or misconduct; QCCC has no assets nor money to accomplish the close-out audit and, in fact, when QCCC closed, FSA owed it \$23,173.50 for amounts it had previously earned for educating its students. As pertinent to the issue now before me, QCCC's former CEO claimed that reimbursements had been delayed unreasonably by FSA after it had been placed on the HCM2, heightened cash monitoring system. QCCC inferentially alluded to the fact that, since it was on the HCM2 system, FSA should accept that the federal funds in issue were properly accounted for even without the mandated audit. However, although given numerous opportunities throughout the appellate processing of this matter to present evidence on how that is so, QCCC, other than ask that the close-out audit requirement be dispensed with, has submitted absolutely no evidence establishing that possibility.

Coincidentally, on March 18, 2009, the Secretary remanded the case of *In re Harrison Career Institute*, Docket Nos. 07-55-SA and 07-63-SA to Judge Richard F. O'Hair to determine the same issue as before me, i.e. the interface between the HCM2 process and the failure to file a close-out audit. In a December 8, 2009 Decision, he opined that the HCM2 process is designed to examine and validate student eligibility to receive Title IV aid and does not, in any way, address many other significant areas such as institutional eligibility, timely disbursements and refunds of unearned funds, etc. In summary, he found that ED's responsibility for the oversight over the proper handling and safeguarding of federal student aid funds by an eligible institution when it ceases to participate in Title IV programs demands the much broader and complex evaluation that the close-out audit provides. Based upon FSA's very comparable presentation before me, I agree with Judge O'Hair's analysis and adopt a similar conclusion as my own.

To fully address the issues raised by the Secretary's remand, I must recognize that the clear inference to be drawn from the Secretary's two remand decisions is that it is possible for an institution that does not file a requisite close-out audit to meet its burden of proof as to the correctness of at least some its expenditures despite the absence of a close-out audit. In so far as the instant case is concerned, although I agree that the HCM2 process does not, in and of itself, act as a substitute for the filing of a close-out audit, I do believe that through appropriate evidentiary submissions, to include any evidence presented during the HCM2 process, an institution can meet its prescribed burden of proof relative to the correctness of any individual student's federal student aid. In any such situations, the respective student's federal student aid should not be required to be returned to ED as improperly accounted for. Unfortunately, no such relevant evidence was presented by QCCC in this proceeding. Consequently, I am convinced that the findings contained in the FAD sufficiently state allegations in a manner that demonstrate the existence of a *prima facie* showing that the institution failed to comply with Title IV program requirements. Consistent with the record before me, I find that QCCC has failed to provide the required close-out audit when it ceased to participate in the Title IV programs and, it has failed to, otherwise, present any evidence sufficient to meet its burden of establishing that its expenditures of Title IV funds was correct.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Quality College of Culinary Careers, pay to the United States Department of Education the sum of **\$75,906.47**, in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: March 31, 2010

SERVICE

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

Lonney Edwards, former CEO
Quality College of Culinary Careers
c/o Ms. Sarah Ditrick, Constituent Service Advisor
Congressman George Radanovich
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