



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

In the Matter of

**Docket Nos. 09-37-SA
09-38-SA**

INSTITUTO IRMA VALENTIN

**Student Financial
Aid Proceeding**

ACN: 02-2006-61994

Respondent.

Appearances:

Ángel R. Abréu Valentin, for Instituto Irma Valentin

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid.

Before:

Richard I. Slippen, Administrative Judge

DECISION

Instituto Irma Valentin (the College) is a private, for-profit educational institution that, until 2006, participated in Federal Student Aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* This proceeding involves two Instituto Irma Valentin campuses, one in Manati, Puerto Rico,¹ and one campus in Arecibo, Puerto Rico.² The Office of Federal Student Aid (FSA), in the United States Department of

¹ Dkt. No. 09-37-SA

² Dkt. No. 09-38-SA

Education (the Department), administers these Title IV, HEA programs.

On October 31, 2006, the College ended its participation in all Title IV programs.³ The provisions of 34 C.F. R. § 668.26(b)(2)(ii) obligate a participating institution, within 45 days of its closure, to submit to the Secretary of Education a letter of engagement for an independent audit of all Title IV funds that the institution received under this program from the date of its last compliance audit. The completed close-out audit must be submitted to the Secretary within 45 days of the date of the engagement letter. On May 11, 2007⁴ and June 8, 2007⁵, the Department sent each of the College's campuses a letter notifying the institution that it was no longer eligible for Title IV funds as of October 31, 2006. The letters also informed the College that it was required to submit a letter of engagement within 45 days and a close-out audit 45 days later. FSA asserts that the College did not submit their close-out audit by the January 24, 2007 deadline.⁶

On July 6, 2007, the independent accounting firm, Feliciano, Seda & Associates (Auditors), confirmed that it would conduct a close-out audit on behalf of the College.⁷ However, the College acknowledged that as of September 8, 2009, it had not yet filed the close-out audits.⁸ On May 20, 2009, the Department sent the College a final audit determination (FAD). The FAD noted that the College had not performed the required close-out audits, and therefore, the Department assessed liabilities against the College for all Title IV funds received between July 1, 2005 and October 31, 2006 with interest. The total assessed liability was \$3,080,002.00 (\$1,709,135.00 (Manati campus) + \$1,370,867.00 (Arecibo campus) = \$3,080,002.00).

On September 8, 2009, the College filed a brief arguing that it should not be the College's "responsibility to comply" with the rules established by the regulations because the College did not have access to all of the "necessary information and records."⁹ The College contends that because it is the subject of an ongoing Federal criminal investigation for conspiracy to commit fraud,¹⁰ the College was not able to get its information to its auditors to complete the close-out audits.¹¹ Because of the College's failure to get the information to its auditors in a timely manner, on April 16, 2008, the Auditors notified the College that it was ceasing to conduct the close-out audit.¹²

The College contends that on August 3, 2006, all records and financial information were taken by the Department's Office of Inspector General (IG) in Puerto Rico, to conduct the

³ ED Ex. 1,2

⁴ ED Ex. 1

⁵ ED Ex. 2

⁶ ED Ex. 3

⁷ Res. Ex. 2

⁸ Res. Brief, at 1-2

⁹ Res. Brief, at 2

¹⁰ Res. Ex. 4

¹¹ Res. Brief, at 2

¹² Res. Ex. 3

criminal investigation.¹³ The College further maintains that on several occasions its officials attempted to access the documents, and on 16 occasions, the College requested information from Robert Wolfe, the case agent (criminal investigator) assigned to the case by the IG.¹⁴ The College seems to indicate that the first documents they received were not until May 8, 2009.¹⁵ No evidence of the College's requests for documents or the IG's failure to reply has been provided. The College indicates that a "certification of attestation" to this can be provided by Mr. Wolfe's office.¹⁶ However, the Respondent has not provided this Tribunal with evidence of its claims.

FSA argues that the College's claim that it did not have access to the information needed for the audit is "completely baseless."¹⁷ According to the Department, Mr. Abréu, the representative for the College, and his auditors met with Department representatives and went over a procedure for obtaining the records required for the close-out audit. During the meeting, Mr. Abréu agreed to provide some initial information to the auditor and then the auditor would contact the IG and obtain access to any other records needed. FSA also asserts that on numerous occasions, the College has been provided with access to the records.

This assertion is supported by a signed affidavit from Patricia Edelson, a senior institutional review specialist who was working on the criminal investigation of the College.¹⁸ Furthermore, when the Auditors informed the College that they would no longer work with the College, the Auditors indicated that the firm was withdrawing because the College's "failure and lack of due diligence to provide the documentation agreed upon at the meeting..."¹⁹

As FSA notes, "despite having over two years to have the audits committed, Irma Valentin failed to fulfill its responsibilities."²⁰ While the College contends that they did not have access to the documents they needed for the close-out audit, the College has provided no evidence of this fact. On the other hand, both the letter from the independent auditor and the affidavit from Ms. Edelson seem to indicate that through proper due diligence, the College could have gotten access to the documents required to complete the close-out audit.

This Tribunal has continuously held that in the absence of this close-out audit, unless the school can otherwise account for the expenditure of all federal student aid funds since the date of the most recent compliance audit, the school is liable for all such funds received for that period. *See In re Harrison Career Institute*, Dkt. No. 07-55-SA, U.S. Dep't of Education (May 15, 2008), at 3; *In the Matter of Stenotopia Business School*, Dkt. No. 01-26-SP, U.S. Dep't of Education (July 31, 2002).

¹³ Res. Brief, at 1

¹⁴ Res. Brief, at 1, 2

¹⁵ Re. Brief, at 2

¹⁶ Res. Brief, at 2

¹⁷ ED Brief, at 6

¹⁸ ED Ex 5

¹⁹ Res. Ex 3

²⁰ ED Brief 5

While the College's ongoing criminal investigation might make the process of conducting a close-out audit more difficult, it does not excuse the College's responsibility to file a close-out audit in a timely manner. Over two and a half years after the College's deadline to submit its required close-out audit, the College admits that it has not completed the audit. The College has failed to offer any evidence that proves that the College has been denied access to necessary documents and information. FSA, on the other hand, has provided a signed affidavit stating that not only has the College had access to the documents, but that officials from the College have accessed seized documents on several occasions.

FINDINGS

The College has failed to prove any justifiable reason why it did not file a close-out audit within the prescribed time period. The regulations give the College 90 days from the time it ceases to participate in Title IV programs. Over two and half years after it stopped receiving Title IV funds, the College admits it still had not completed its required close-out audit. Therefore, it is appropriate for FSA to require the College to return all Title IV funds dispersed within the unaudited period, from July 1, 2005 to October 31, 2006, at both campuses.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Instituto Irma Valentin must pay \$3,080,002.00 to the U.S. Department of Education.

Judge Richard I. Slippen

Dated: July 23, 2010

SERVICE

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

Ángel R. Abréu Valentin
Instituto Irma Valentin
560 Oceania – Bo. Islote
Arecibo, Puerto Rico 00612

Denise Morelli, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202