



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

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In the Matter of

**Docket No. 10-01-SA**

**SAVANNAH RIVER COLLEGE,**

Federal Student Aid Proceeding

Respondent.

PRCN: 200820426594

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Appearances: Gerald M. Ritzert, Esq. and Stephen T. Chema, Esq., of Ritzert & Leyton, Fairfax, Virginia, for Savannah River College.

Russell B. Wolff, 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**

Savannah River College (SRC), located in Augusta, Georgia, was a proprietary postsecondary educational institution that provided varied programs leading to an Associate Degree. Prior to its closing on June 30, 2009, it was accredited by the Accrediting Council for Independent Colleges and Schools and participated in the federal student assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070, *et seq.* The office of Federal Student Aid (FSA) is the organization within the U. S. Department of Education (ED), having cognizance over and administering these programs.

Between March 3, 2008, and March 7, 2008, Institutional Review Specialists from FSA's School Participation Team – Atlanta conducted an on-site program review at SRC. The review examined SRC's compliance with the statutes and regulations governing the administration of the Title IV programs for the 2006/2007 and 2007/2008 award years. Later, it was expanded to encompass the 2005/2006 award year, as well. On July 31, 2008, the review team issued a program review report that contained 18 actionable findings. One of the findings required SRC to perform a file review of all their student files to ascertain if any violations uncovered during the program review existed outside the selected audited samples. FSA analysts reviewed a

random sample of the files that were required to be submitted by SRC in response to the program review report and, upon uncovering numerous discrepancies in that sample, proceeded to perform a 100% review of all submitted files. On September 15, 2009, the Area Case Director, under authority of 34 C.F.R. § 668.111 *et. seq.*, issued a Final Program Review Determination (FPRD) dismissing some of the findings of the program review report, affirming seven of the findings of that report and, as a consequence, demanding that SRC return \$1,776,424.00 to ED for the six findings that included monetary demands.

On December 28, 2009, SRC exercised its rights under 34 C.F.R. Part 668, Subpart H, and appealed the findings in the FPRD. In turn: on January 15, 2010, I was assigned to adjudicate this appeal as the hearing official; I issued an order Governing Proceedings (OGP) on January 20, 2010; and after granting a number of extensions of time for the submission of briefs and evidentiary matter, on February 7, 2011, I closed the record and took the case under advisement for issuance of a written decision.

As an initial observation, it is well established that in a Subpart H – Audit and Program Review Proceeding, the respondent institution has the burden of proving by a preponderance of the evidence that the Title IV funds in issue were lawfully disbursed. Further, in accordance with 34 C.F.R. § 668.116 (d), to sustain its burden, an institution must establish through a submission of credible evidence that (1) the expenditures questioned in the program review were proper and (2) the institution complied with program requirements. I will discuss each finding separately.

Findings 3 and 12 are no longer before me for resolution. In its brief filed pursuant to the OGP, SRC disputed those two findings in the FPRD. First, it adamantly denied the allegation that it had improperly used Title IV funds as alleged in Finding 3. Second, it objected to being sanctioned for its claimed acceptance in good faith of invalid high school diplomas from two students to establish their entitlement to federal student aid, as alleged in Finding Number 12. Apparently, SRC's argument on these two issues was persuasive since FSA chose not to pursue them further in this proceeding. As a consequence, FSA reduced its demand by \$185,709.43.

Further, as to both Findings 2 and 8, SRC only appealed a portion of FSA's respective demands. In Finding 2, FSA claimed that SRC disbursed Title IV aid 334 students over the three award years under review but failed to properly refund amounts for students who failed to attend portions of their instruction. SRC appealed that part of the allegation involving 51 of those students and FSA accepted the evidence as to 35 of those students, but reaffirmed its claim for the remaining below listed 16 students from the three award years.

The students from 2005-2006 award year, the amounts in issue and my findings are:

- # 6 - \$ 1,011 (was only entitled to \$3,039 instead of the \$4,050 disbursed)
- #10- 4,998 (was a no-show in the fall of 2006)
- #14 - 676 (was less than half- time student)
- #34 - 307 (student attended at different time than claimed)
- #39 - 1,012 (student attended at different time than claimed)
- #58 - 707 (student attended at different time than claimed)

The students from the 2006-2007 award year, the amounts in issue and my findings are:

- # 32 - \$ 337 (was entitled to only \$2,362 instead of \$2,699 disbursed)
- # 34 - 675 (was actually entitled to \$1,675 less than disbursed)
- # 46 - 1,350 (student attended at different time than claimed)
- # 89 - 2,166 (was not entitled to the third disbursement)
- #152 - 270 (was a  $\frac{3}{4}$  rather than a full-time student)

The students from the 2007-2008 award year, the amounts in issue and my findings are:

- # 12 - \$ 1,249 (aid for a different time than claimed)
- # 64 - 80 (was less than a half-time student)
- # 67 - 1,077 (was actually entitled to \$1,436 less than disbursed)
- # 99 - 1,438 (was a no show for the spring of 2008)

To recapitulate, the FPRD demanded the return of \$756,433.36 (\$712,405 plus \$44,028.36 cost of funds) for Finding 2; SRC appealed \$64,500 of that demand (for 51 students); and FSA accepted SRC's evidence as to \$47,087 of the amount appealed (35 students). As a consequence, FSA reduced its demand for Finding 2 to \$665,318 plus interest. Finally, upon review and on the basis of the above discussion, I find that SRC failed to satisfy its burden of proof and persuasion as to each of the above disputed instances in Finding 2. Therefore, I hereby affirm FSA's amended final demand as to Finding 2.

In Finding Number 8, FSA alleged that SRC failed to establish that it properly calculated and then repaid Title IV aid that it had not earned for students who withdrew prior to completion of their program of study. Regulations require that contemporaneously with making the appropriate repayment of unearned Title IV funds, an institution is required to make an adjustment in ED's Common Origination and Disbursement (COD) system evidencing the repayment. The FPRD determined that SRC failed to make the requisite downward adjustments in COD and, therefore, must repay \$110,789 for 94 students in the 2006-2007 award year. SRC appealed liabilities totaling \$44,266 for 44 of those students; FSA accepted evidentiary submissions for 12 of those students and reduced its claim by \$15,352. As it pertains to the 2007-2008 award year, the FPRD identified 79 students for whom adjustments to COD had not been made totaling \$71,867; SRC appealed liabilities totaling \$25,069 for 28 of the students; and FSA accepted the evidence relative to 14 students and reduced its claim by \$13,680.

After the reductions referenced above, FSA seeks the return of \$153,624, plus interest for Finding 8. I find that SRC failed to make downward adjustments to COD that reflect a repayment for students who withdrew, as alleged by FSA. Further, SRC does not explain in any way why it failed to make those updates to the COD system and fails to convince me that in the face of such failure, it has met its burden of proof as promulgated in 34 C.F.R § 116 (d). Therefore, I affirm FSA's demand for the return \$153,624, plus interest for Finding 8.

In Finding Number 4, FSA alleged that SRC had over awarded Pell Grant funds in the amount of \$137,270 during the three award years in issue. The finding also included a demand for \$3,413 in interest. SRC does not contest the finding relative to overpayment of these Pell

Grants; rather it claims it should be allowed a credit for \$22,834 in under awards of Title IV funds during the same timeframes. The law in this area is quite clear. 34 C.F.R. § 679 (a) (2) provides that an institution must return overpayment amounts to its Pell Grant account. For amounts that any entitled student did not receive, the institution must provide that amount to the student and then seek reimbursement from FSA. There is no authority for the proposition that the institution can offset one amount against the other, as claimed by SRC. In fact, this tribunal has held that in cases where under awards had not been paid to the particular students, offsets are not authorized and, if allowed, would enrich the institution for its own error. *See, In the Matter of St. Petersburg College*, Docket No. 08-19-SP, U. S. Dep't of Educ. (July 9, 2010).

Separately, in an overarching finding labeled number 1, the FPRD found that SRC failed to maintain fiscal records through which it could establish its proper use of Title IV funds, as it is required to do. Specifically, it could not provide a general ledger and subsidiary ledgers to compare with Title IV awards and expenditures, as required by 34 C.F.R. § 668.24 (b) and (d). The FPRD determined that, as a consequence of this failure, SRC could not substantiate \$505,630.00 in expenditures it made for the three award years under review and must be returned to ED. SRC appealed this finding by asserting generally that this finding duplicates the other findings in the FPRD. It argues that ED should not be allowed to claim liabilities in Finding 1 based on computer-based accumulated balances while, at the same time, assert liabilities in Findings 2, 4, and 8 based on a 100% review of student records for the same time period. For its part, FSA argues that the two claims are not established as mutually exclusive. Finding 1 is bottomed on SRC's failure to substantiate its draw-downs in the COD system while the other findings are based on information regarding specific students and, therefore, there is no duplication of liabilities. While it is possible that some of the resulting demands included in Finding 1 may be also included in some of the other findings, I find that, because of the Respondent's total lack of viable financial records, it is impossible to reconcile these figures or show how they might be subsumed with one another. As to this finding, it is clear that SRC has utterly failed to meet the high standard of care required of a fiduciary administering Title IV funds and has, as a result, failed satisfy its regulatory burden of proof and persuasion. Based on the above conclusion, I hereby affirm Finding Number 1.

Finally, SRC asserts as a defense that I should find that its liability under the FPRD should be offset by reimbursements it claims it is entitled to receive from FSA. SRC asserts that it was placed on the HCM2 (reimbursement) payment system in 2008, under which, it had to establish its entitlement to Title IV funds, prior to those funds being made available for draw down. Specifically, SRC alleges that it had submitted conforming reimbursement packages totaling approximately three million dollars, yet it has received only approximately \$330,000.00 of that amount to date. The upshot of that assertion is that FSA has in-hand substantially more of SRC's funds than it seeks in this action. In response, FSA points out that the question of whether SRC is entitled to funds owing under the HCM2 reimbursement system is outside my jurisdiction to decide. I find that this tribunal had consistently and specifically held that it lacks authority to act on reimbursement requests submitted under the HCM2 system by a respondent. First, Hearing Officials only have limited jurisdiction in a Subpart H proceeding, i.e. whether the FPRD is supportable, in whole or in part. 34 C.F.R. § 668.118. *See also, In the Matter of*

*Modern Trend Beauty School*, Docket No. 98-109-SP (March 14, 2001). Further, the question of whether a respondent is entitled to moneys claimed under the HCM2 reimbursement system requires consideration of evidence not before a Hearing Official in Audit/Program Review Proceeding. Although an offset is a recognized legal defense in the appropriate case, unfortunately the forum for such an adjudication is elsewhere.

In summary, I find that SRC has failed to meet its burden of proof as to the specific FPRD findings and I take the following action pertaining thereto. Finding number 1 is affirmed in the amount of \$505,630. Finding number 2 is affirmed in the amount of \$665,318, plus interest. Finding number 4 is affirmed in the amount of \$137,270, plus interest. Finding number 8 is affirmed in the amount of \$153,624, plus interest. The total affirmed finding equals \$1,461,842, plus interest. As indicated above, findings number 3 and 12 were not pursued by FSA and are, therefore, dismissed.

### **ORDER**

On the basis of the foregoing findings of fact and conclusions of law, it is ORDERED that Savannah River College pay to the U. S. Department of Education a total of \$1,461,842, plus interest, for the findings, as enumerated above.

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Ernest C. Canellos  
Chief Judge

Dated: February 16, 2011

SERVICE

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

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