



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

In the Matter of

Docket No. 10-25-SP

CONCORDIA COLLEGE,

Federal Student Aid
Proceeding

Respondent.

PRCN: 2009-4-04-26977

Appearances: Dr. Tilahun M. Menedo, President, for Concordia College.

Jennifer L. Woodward, Esq., Office of the General Counsel, United States
Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

Concordia College (Concordia) is a private, non-profit institution offering a four-year degree program, located in Selma, Alabama. It has participated in the various federal student aid programs, including the Federal Perkins Loan Program, which are authorized under Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Office of Federal Student Aid (FSA) of the United States Department of Education (Department) administers these programs. On April 27, 2010, FSA issued a Final Program Review Determination (FPRD) assessing a liability of \$84,214 against Concordia based on an allegation of an improper transfer of Federal Perkins Loan Funds. FSA subsequently amended the amount of the liability to \$84,053. Concordia filed a timely appeal of this determination on June 12, 2010.

FSA conducted a program review of Concordia's participation in the federal student aid programs in July, 2009. During that review, FSA's school participation team made a number of findings, only one of which is before this tribunal: Concordia improperly transferred Federal

Perkins Loan Program funds from its Perkins Loan Program account to its general operating account. More specifically, it found that on June 13, 2008, Concordia transferred \$79,344.95 from its Perkins Loan banking account to its general operating fund without preparing or maintaining any documentation showing that the funds were used for making loans to its students, or for any other authorized Perkins Loan expenditures. The FPRD explains that the funds in this account were derived from repayments made by student borrowers; and, unless used for subsequent loans, these funds should have been returned to the Department. FSA says this transfer to Concordia's operating account was in violation of the regulations governing the Perkins Loan program. Prior to the issuance of the FPRD, FSA requested, but did not receive, documentation from Concordia to support its claim that the withdrawal was appropriate. When Concordia did not supply such documentation, FSA extended two options to the institution. The first one obligated Concordia to initiate a liquidation of its Perkins Loan portfolio, following which FSA would determine what amounts should be remitted to the Department and which could be retained by the institution. Under the second option, Concordia would be required to make immediate payment of Perkins Loan Program cash on hand. Concordia selected the first option, but ultimately failed to provide the requested documentation. Therefore, FSA is seeking the return of \$84,053 which consists of the amount of the original transfer, plus all funds which have subsequently accumulated in the account.

In its appeal, Concordia points out that it has not been active in the Perkins Loan Program for some time, other than to receive repayments by student borrowers. In support of this, it submitted its Fiscal Operations Report and Application to Participate reports for the two years prior to this review. It says these reports substantiate that it did not request any Federal Perkins Loan monies from the Department for those years. It asserts that if its banking records indicate anything to the contrary, it is probably the result of internal accounting misclassifications which improperly give the appearance of excess cash in the Perkins Loan Program account. Concordia further explains that it acted in good faith to resolve this FPRD finding by initiating a loan liquidation process and only stopped when FSA informed it that its planned response was deficient. Concordia concludes that as far as it can tell, it only has three remaining Perkins loans versus the 75 that the FPRD claims it has. From these facts, and information it obtained from its Institutional Capital Contribution report, it believes its liability should be reduced to \$31,650.

The regulations governing the handling and disbursement of Perkins Loan Program funds are relatively clear. They prescribe that a participating institution must agree that it will establish a bank account in which it deposits Perkins Loan Program funds, and will use the money in that account only to make loans to students, and to satisfy certain other specific costs associated with administering this loan program. *See* 34 C.F.R. §§ 674.8(a) & (b). Additionally, the institution is required to establish and maintain Perkins Loan Program and fiscal records that are reconciled at least monthly. *See* 34 C.F.R. § 674.19(d).

The FPRD and evidentiary documents clearly establish that on June 13, 2008, Concordia transferred \$79,344.95 out of its Perkins Loan Program bank account to another account, presumably its general operating fund. When questioned about this transfer and offered the opportunity to substantiate that the funds were transferred to students in the form of loans or used

to satisfy Perkins Loan expenses, it was unable to provide any of this documentation. Neither at the time of the program review nor now has it offered any evidence or rationale to explain this withdrawal or document that it was made in support of the Perkins Loan Program. At best, Concordia could state only that it had not participated in the Perkins Loan Program for several years and that its only activity in that arena was to accept Perkins Loan Program repayments from student recipients. Concordia alluded to some internal accounting misclassification, but it did not develop this potential defense. Additionally, the dispute as to whether it has three or 75 remaining Perkins Loan Program loans does not appear to have a bearing on the issue before me. FSA was not persuaded by Concordia's submissions and arguments that this transfer of funds was authorized, and nor am I.

In a 34 C.F.R., Subpart H proceeding such as this, Concordia clearly has the burden of proving by a preponderance of the evidence that the institution complied with program requirements. *See* 34 C.F.R. § 668.116(d); *In the Matter of Du Quoin Beauty College*, Dkt. No. 06-51-SP, U.S. Dep't of Educ, (May 14, 2009). There may well have been some improper classification of Concordia education funds by its own personnel, but that does serve as an adequate defense to the issue before me. Further, its references to data in its Fiscal Operations Report and Application to Participate reports and its Institutional Capital Contribution reports do not add anything to its argument that it was unaware that it was improperly retaining and transferring Perkins Loan funds. Accordingly, I find that Concordia has not met its burden of persuasion that its transfer of funds from its Perkins Loan Program banking account was proper. The FPRD is supportable in whole, and I affirm the liability assessed against Concordia College.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Concordia College pay to the U.S. Department of Education \$84,053.

Judge Richard F. O'Hair

Dated: February 16, 2011

SERVICE

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

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