



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

In the Matter of

Docket No. 10-32-SP

**PRAIRIE VIEW AGRICULTURAL AND
MECHANICAL UNIVERSITY,**

Federal Student Aid Proceeding

Respondent.

Appearances: Leslie H. Wiesenfelder, Esq., and Daniel D. Prichard, Esq., Dow Lohnes PLLC, Washington, D.C., for Prairie View Agricultural and Mechanical University.

Russell B. Wolff, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Prairie View Agricultural and Mechanical University (Prairie View) is a public institution of higher education located in Prairie View, Texas. It is a part of the Texas A&M University System and offers a variety of programs leading to the full range of degrees up to and including doctoral degrees. Prairie View's programs are accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACS), and are eligible to participate in the various federal student assistance programs that are authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV) 20 U.S.C. §§1070 *et seq.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is the organization that is charged with oversight over these programs.

From January 21 to February 8, 2008, FSA reviewers from its Dallas School Participation Team conducted an on-site program review of Prairie View's management of its Title IV responsibilities. This review focused on Prairie View's alleged Federal Family Educational Loan (FFEL) disbursements at three ineligible locations, in violation of 34 C.F.R. § 660.20(c)(1)(i). A program review report was issued on August 28, 2009, which detailed three instances where Prairie View, as an institution participating in Title IV programs under a provisional certification, improperly distributed FFEL funds to students at unreported, therefore, unapproved locations.

After considering Prairie View's response to the program review report, on May 13, 2010, the Area Case Director issue a Final Program Review Determination (FPRD) affirming the findings of the program review and assessing \$4,623,092.90 as liability for those findings. Subsequently, on July 1, 2010, Counsel for Prairie View filed a written Request for Review contesting the findings of the FPRD. In due course, the parties submitted their respective briefs and proposed evidentiary matter. In its appeal, Prairie View does not contest the facts as alleged by FSA, however, it argues that the alleged violation is a classic technical violation that does not support the over \$4.6 million liability imposed by FSA.

I make the following findings of fact in this proceeding. Prairie View was provisionally certified to participate in Title IV programs sequentially on April 17, 2001, February 12, 2004, and September 17, 2010. From sometime prior to January 2004 until June 2006, Prairie View operated a separate instructional site at Paul Quinn College (PQC), without first notifying ED. Students took more than 50% of a graduate level educational program there and were granted \$8,976,709.12, in FFEL Title IV aid. In June 2006, the location was moved to the Cedar Valley College Center (CVCC), again without notice to ED, and where students took more than 50% of a graduate level course and where they received \$4,374,727.46, in FFEL Title IV aid. Finally, Prairie View established a separate distance learning center at The Dallas Urban League Center (DULC) in January 2006 and continued that program there until closing the site in August 2008. Again, without notifying ED, Prairie View provided \$8,302,669.38, in FFEL Title IV aid to students taking coursework through telecommunication equipment at the Dallas Urban Center. As a consequence of the above, and by applying its well-established Estimated Actual Loss Formula, FSA calculated its losses as: \$2,164,191.30 for the program at PQC; \$850,058.75 at CVCC; and \$1,608,842.85 at the DULC. Hence, the total FSA demand for the return of \$4,623,092.90.

I begin my consideration of this matter by noting that this proceeding is governed by regulations enumerated in 34 C.F.R. Subpart H, wherein, it is well-established that in an audit and program review proceeding, the Respondent 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. § 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 indicated above, Prairie View does not dispute the facts as alleged by FSA and does not present evidence of a defense to the FSA claim. Rather, it alleges that the underlying conduct was inadvertent and argues that the absolute position taken by FSA is not required by the law and is surely unfair. It posits that this is "a classic technical violation that in no way supports the \$4.6 million liability imposed by FSA." Included within their argument, Prairie View claims that the prohibition against a provisionally certified institution adding additional locations without ED's consent was never intended to apply to public universities. Prairie View alleges that historically ED has approved all locations added by public universities when requested. In fact, Prairie View claims that had it applied to ED for approval it surely would have been granted given the fact that

these programs were created as part of an effort to address serious problems of the limiting effects of a previously segregated system of higher education in Texas that had been identified by ED's Office of Civil Rights. In addition, Prairie View claims the failure to apply for approval was inadvertent and there was no fraud involved – the students and the programs were eligible in all other respects.

Just as the facts in this case are abundantly clear, so is the law applicable to those facts. 34 C.F.R. § 600.20 is the operative regulatory authority over the area of expanding institutional eligibility. If an eligible institution wishes to expand its programs to an additional location it must apply to the Secretary and wait for approval if it will offer 50% or more of a program there and participates in Title IV programs under a provisional certification. 34 C.F.R. § 600.20 (c). In addition, regardless of any other limitations, institutions must notify ED of all new locations they establish. 34 C.F.R. § 600.21 (a) (3). Since there is no doubt that Prairie View failed to notify ED of its program offerings at the new locations, it was clearly in violation of the provisions of 34 C.F.R. 600.20. Further, rather than being a technical violation, as proposed by Prairie View, once such a violation is established, Prairie View is liable for all Title IV funds it disbursed to students enrolled in the remote locations. 34 C.F.R. § 600.20 (f) (5).

In spite of the sympathy I might have for the situation that Prairie View finds itself and especially under the mitigating circumstances propounded, I do not have any discretion in this matter. Under the applicable provisions found at 34 C.F.R. § 668.117 (d), I am required to follow properly promulgated regulations and cannot waive them or rule them to be invalid. In addition, I have addressed a very similar situation in a past decision. *See, In re Wrightco Technologies Technical Training Institute*, Docket No. 05-01-SP, U.S. Dep't of Educ. (August 15, 2005). Based on my reasoning there and the Secretary's affirmance thereof, I can find no basis to deviate from the language I authored therein. Therefore, I hereby affirm the findings of the Final Program Review Determination.

ORDER

On the basis of the foregoing, it is ORDERED that Prairie View Agricultural and Mechanical University pay to the United State Department of Education the total sum of \$4,623,092.90 for the affirmed finding.

Ernest C. Canellos
Chief Judge

Dated: August 3, 2011

SERVICE

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

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