



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

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In the Matter of

**Docket No. 10-56-SP**

**LEXINGTON COLLEGE,**

Federal Student Aid Proceeding

Respondent.

PRCN: 200940527078

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Appearances: Maria Lebrun, Director of Financial Aid, Chicago, Illinois, for Lexington College.

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**

Lexington College (Lexington), located in Chicago, Illinois, is a private nonprofit institution of higher education. It is accredited by the Higher Learning Commission, and participates 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) that has cognizance over and administers these programs.

From September 8, 2009 to September 11, 2009, reviewers from FSA's School Participation Team – Northwest – Chicago conducted an on-site program review at Lexington. The focus of that review was to determine Lexington's compliance with the statutes and implementing regulations pertaining to its administration of the Title IV programs. The team examined a randomly selected statistical sample of files from both the 2007-08 and 2008-09 award years, then under review. On July 13, 2010, the team issued a program review report that contained a number of adverse findings. After receiving and reviewing additional information provided by the Lexington, on October 22, 2010, FSA issued a Final Program Review Determination (FPRD) that dismissed a number of the program review findings, affirmed a

number of such findings, and demanded the return of \$10,244.02 for those affirmed findings.

By letter dated December 1, 2010, Lexington's Director of Financial Aid filed a Request for Review, appealing only one of the adverse findings in the FPRD. That finding is that Lexington failed in its duty to identify and then resolve a discrepancy in the information it received from a student with respect to her application for federal student financial aid. The amount sought by FSA for this finding is \$4,875.55. In due course, I was appointed as hearing official, the parties submitted their respective briefs and evidentiary matter and I took the case under advisement.

Lexington's appeal is straight-forward. It points out that Federal regulations require an eligible institution to verify the information it receives from students in their application for federal student aid when that student's application is selected for verification by FSA. 34 C.F.R. § 668.54(a)(2)(i). However, the regulations limit that responsibility to verifying only 30 such selections from FSA. 34 C.F.R. § 668.54 (a)(2)(ii). In its defense, Lexington first asserts that the application of the student at issue was not selected for verification by FSA and regardless, it had already verified 30 student applications selected by FSA.

FSA's position is, likewise, straight-forward. It posits that the regulatory provisions alluded to by Lexington do not exhaust its verification requirements; they only limit FSA's ability to require additional verifications. FSA points out that since an eligible institution acts as a fiduciary, it has the responsibility to act with the highest degree of care when dealing with federal funds. 34 C.F.R. § 668.82. Consistent with that responsibility, it must resolve any inconsistent information it receives from students relative to their application for federal student aid prior to disbursing such aid. Here it failed to do so and, as a result, erroneously disbursed Pell Grant Funds to the student at issue and must be returned.

A quick review of the facts reveals that the student at issue submitted a Free Application for Federal Student Aid (FAFSA) seeking federal financial assistance in the form of Pell Grant. *See*, 34 C.F.R § 690.1, *et seq.* In order to determine a particular student's entitlement to Pell Grant funding, a formulation requires the establishment of the student's expected family contribution (EFC). 34 C.F.R. § 690.2. As pertinent to the issue before me, first the student's FAFSA correctly reported a figure of \$39,705.00 as her parent's income earned from work; then mistakenly negated that figure by an entry of \$39,705.00 as an item not included as income from work. Because the resulting EFC utilized in its calculation was zero, Lexington disbursed \$4,310.00 in Pell Grant Funds to the student. Upon review, by correctly including the parent's income in the EFC calculation, the student was not entitled to any Pell Grant funding. As a consequence, FSA seeks the return of both the \$4,310.00 erroneously disbursed to the student as well as the \$565.55 cost of those funds.

Given an institution's status as a fiduciary when dealing with federal education funds, it has a duty to collect and coordinate information in order to properly determine a student's EFC and resolve any discrepancies within that information. To satisfy that obligation, regulations require an institution to develop an adequate system to ensure consistency of the information

related to a student's application for federal student financial aid. *See* 34 C.F.R. § 668.16 (f). To fully comply with the spirit and intent of that requirement, an institution must require a student to verify any information on their application for federal aid which the institution has reason to believe is inaccurate. *See* 34 C.F.R. § 668.54 (a)(3). Based on the recitations of fact and law above, it is clear that, in contravention of regulations promulgated under authority of Title IV, Lexington improperly disbursed \$4,310.00 in Pell Grant funds to the student at issue. With the student presenting two exact figures in her application, one reporting a \$39,705.00 salary for the student's parent and another entry of \$39,705.00 negating that figure, Lexington was on clear notice that one of the figures was probably incorrect. That being the case, it was incumbent on Lexington to take whatever action was available to resolve the possible conflict between those entries; and had it done so, it would have discovered the error. Consequently, I affirm FSA's demand as to this finding.

### **ORDER**

On the basis of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that Lexington College pay to the United States Department of Education the sum of \$10,244.02, as demanded in the FPRD.

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Ernest C. Canellos  
Chief Judge

Dated: March 15, 2011

SERVICE

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

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