



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

In the Matter of

Docket No. 13-04-SP

**KEVOSNIK SCHOOL OF HAIR
DESIGN**

Federal Student Aid Proceeding

PRCN: 2012 2042 7831

Respondent.

Appearances: Martin Niforth, Atlanta Student Aid, Canton, GA, for KeVosNik School of Hair Design.

Denise Morelli, 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

KeVosNik School of Hair Design (KSHD) is a participant in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV, HEA programs), 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 January 15, 2013, FSA issued a Final Program Review Determination (FPRD) assessing liabilities of \$30,668 against KSHD. This liability assessment was based upon a number of violations of the governing regulations following FSA's program review of KSHD's compliance with the statutes and federal regulations as they pertain to the eligibility of KSHD's programs for participation in Title IV programs. The program review examines KSHD's administration of the programs during award years 2010/2011 and 2011/2012. KSHD appealed this determination on February 20, 2013 pursuant to 34 C.F.R. § 668.113. Both parties have filed briefs to this tribunal in response to the Order Governing Proceedings. KSHD disclaims liability for all remaining findings. In its response, the Department eliminated the liability assessment for Finding 3, in the amount of \$7,400, and reduced the assessment for Finding 1 from \$13,513 to \$13,347, for a total adjusted liability assessment of \$22,643.

The statutes and regulations governing the Title IV, HEA programs require a participating institution to demonstrate it is capable of properly administering these programs. 34 C.F.R. § 668.16. As a fiduciary of these federal funds, it owes the Department the highest standard of care and diligence in administering these programs efficiently and ensuring that the funds are properly spent. 34 C.F.R. § 668.82(b). As applied to its eligibility to receive Title IV funds, an institution must establish and maintain, on a current basis, any application for Title IV, HEA funds and program records that document (1) its eligibility to participate in the Title IV, HEA programs; (2) the eligibility of its educational programs for Title IV, HEA program funds; (3) its administration of Title IV, HEA programs in accordance with all applicable requirements; (4) its financial responsibility; (5) information included in any application for Title IV, HEA program funds; and (6) its disbursement and delivery of Title IV, HEA program funds. 34 C.F.R. § 668.24(a). In this proceeding, KSHD bears the burden of proving by a preponderance of the evidence that its expenditures were proper and complied with all program requirements. 34 C.F.R. § 668.116(d). To sustain its burden, KSHD must establish through the submission of credible evidence that it properly disbursed Title IV, HEA funds on behalf of the intended student beneficiaries. *See In the Matter of Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (Decision of the Secretary) (Sept. 26, 1991).

A program review of twenty-eight files from the 2010/2011 and 2011/2012 award years was conducted by FSA from March 12-16, 2012. The Program Review Report, issued on April 30, 2012, identified seventeen findings. The FPRD states that KSHD took the corrective actions necessary to resolve Findings 4, 5, and 7-17, but failed to adequately address Findings 1, 2, 3, and 6. For Finding 1, the FPRD states that KSHD failed to correctly calculate the students' daily, weekly, and monthly clock hours earned because it erroneously counted lunch periods and breaks in full, resulting in the students receiving federal aid for unearned hours. 34 C.F.R. § 600.2. For Finding 2, the reviewers found that KSHD failed to provide a valid high school diploma or GED for student #16. 34 C.F.R. § 668.32. For Finding 3, the FPRD states that KSHD failed to resolve the default status of student #4 prior to disbursing aid to the student. 34 C.F.R. § 668.32. However, on appeal, the Department has eliminated the liability for Finding 3. For Finding 6, the reviewers found that KSHD failed to correct Return of Title IV (R2T4) calculation errors and therefore miscalculated the amount of R2T4 funds it had to return to the Department for student #8, who withdrew on June 1, 2011, during the second payment period. 34 C.F.R. § 668.22.

On appeal, KSHD asserts that no liabilities should be owed pursuant to the FPRD, arguing that FSA's conclusions are inaccurate and unsupported by regulation or established case law. KSHD addresses each of the four remaining findings at issue in the FPRD *seriatim*. In response, the Department has removed the liability for Finding 3, and adjusted the liability for Finding 1. Therefore, the remaining issues concern Findings 1, 2, and 6.

Finding 1

For Finding 1, KSHD asserts that the Department's guidance allows institutions to count break periods as part of a clock hour. In support of this assertion, KSHD cites to the FSA Handbook sidebar captioned "Measuring attendance in clock hours," which states that "[a] clock hour is based on an actual hour of attendance (though each hour may include a 10-minute break)." See R Exs. 1-C, 1-D, and 1-E. KSHD argues that a clock hour is calculated by dividing those minutes the institution offers by 60, citing to *In the Matter of Instituto de Education Universal*, Dkt. Nos. 96-28-ST, 96-93-SP, and 96-103-SA, U.S. Dep't of Educ. (Jan. 24, 1997). As such, KSHD asserts that they offer 450 minutes of classroom instruction per day, which should be divided by 60 for a total of 7.5 daily clock hours completed per student.

In its response, FSA asserts that KSHD's methodology in calculating students' daily hours by including all break and lunch times in the 450 minute total is inconsistent with the proper definition of a "clock hour." In order to receive Pell Grant funds, a student must be enrolled in a program requiring a minimum of 15 weeks of instruction and 600 hours of instructional time. 34 C.F.R. § 668.8(d). Once a student is deemed to be enrolled in an eligible program, the amount of Pell Grant funds that student receives is calculated by using the guidelines set forth in the regulations. See 34 C.F.R. §§ 690.62, 690.63. If a program is measured in clock hours, the institution must use the Title IV definition of a clock hour to determine the program hours eligible for funding, i.e., "a period of time consisting of 50-60 minutes of class, lecture, recitation, or faculty supervised lab, shop or internship in a 60 minute period." 34 C.F.R. § 600.2. FSA argues that KSHD's methodology is incorrect because an institution may only count 50 or 60 minutes in a single 60 minute period towards the clock hours completed. Here, KSHD offers a 1500 hour program. The day program runs from 9:00 AM to 4:30 PM for a total of 7.5 hours and the evening program runs from 4:00 PM to 9:00 PM for a total of 6 hours. FSA refers to KSHD's course catalog, which specifies that day program students are required to take a 15 minute morning break and a 30 minute lunch break, ED Ex. 3-12, as well as a 10 minute afternoon break, ED Ex. 3-9. The catalog also states that evening students are required to take one 15 minute break. See ED Ex. 3-12. Thus, based on the proper definition of a clock hour, FSA asserts that KSHD was entitled to include 10 minutes of the morning break, 10 minutes of the lunch break and the full 10-minute afternoon break in

determining the students' daily hours completed. Therefore, FSA argues that the remaining 25 minutes of break time should have been excluded from KSHD's calculations.¹

FSA also notes that KSHD's incorrect understanding of a clock hour definition as allowing for 10 minutes of potential break time to be counted for each hour is unsupported by case law because *In the Matter of Instituto de Education Universal*, Dkt. Nos. 96-28-ST, 96-93-SP, and 96-103-SA (Jan. 24, 1997), cited in KSHD's brief, was reversed by the Secretary of Education on October 28, 1997, *id.* Thus, FSA states that the regulatory language dictating the definition of a clock hour, as well as established case law, requires an institution to look to each discrete 60 minute block of time and how it is structured to determine the number of instructional minutes that can be counted towards a student's total attendance hours. *See Instituto de Educacion Universal v. U.S. Dep't of Educ.*, 341 F.Supp.2d 74 (D.P.R. 2004).

KSHD further asserts "additional facts" to be taken into account in assessing liability for Finding 1. First KSHD argues that, as a beauty school requiring "hands-on" work such as chemical hair treatments, it cannot provide adequate training to its students or services to its clients if forced to adhere to a strict break schedule requiring students to take a 10-minute break period after every 50-minute period of instructional time. This is because many hair treatments will require flexibility in terms of the time it takes to administer them. Moreover, KSHD argues that breaks should not be excluded due to the fact that they are not mandatory or held at specific times each day, but rather allowed for in the daily schedule only after a student signs in at the school. FSA responds by noting KSHD's lack of evidentiary support for this claim, given that it is inconsistent with the clear language in the school's catalog, which requires breaks and a lunch period. ED Ex. 3-9. Thus, FSA argues that, when breaks are properly excluded in calculating the daily attendance totals, KSHD overpaid six students by \$13,347, which must be returned to the Department.

Finding 2

For Finding 2, KSHD argues that there was, in fact, proper documentation on file for student #16 in the form of a valid high school transcript signed by a school official and indicating the student graduated on May 21, 2000. *See* R Ex. 2-A. In order to be eligible to receive Title IV funds, a student must be academically qualified to study at a postsecondary level, which requires the student to have a valid high school diploma or its equivalent. 34 C.F.R. § 668.32(e). KSHD asserts that an official high school transcript is considered by the Department to be valid documentation of high school graduation, and cites to the FSA Handbook, which states that if an institution "discover[s] a discrepancy after disbursing FSA funds, [it] must reconcile the

¹ Although the Department originally subtracted 55 minutes per day from the students' totals in the FPRD, it adjusted this subtraction to 25 minutes per day, as reflected in the change in liability amount for Finding 1 from \$13,513 to \$13,347.

conflicting information and require the student to repay any aid for which he wasn't eligible, unless he is no longer enrolled for the award year and will not re-enroll." R Ex. 2-H. KSHD interprets this to mean that, without reason to believe the diploma or transcript is invalid, the institution is not required to question its validity. KSHD notes that student #16 certified on the 2011/2012 FAFSA that she was a graduate of Dublin High School, *see* R Ex. 2-B, that the Department did not question the student's documentation during the review of her file and disbursement of Pell funds, R Ex. 2-D, and that it is assumed that Pell funds had already been disbursed to the student prior to her being administratively withdrawn for nonattendance on November 23, 2012. *See* R Ex. 2-1. Therefore, KSHD argues that, absent documentation from the Department, there was no reason to question the validity of student #16's transcript, no conflicting information to be resolved, and no repayment required because the student is no longer enrolled. R Ex. 2-H.

FSA responds that, although student #16's documentation demonstrates a valid high school completion date, it clearly states that the student failed three out of four subjects on the Georgia High School Graduation Test, which is required in order for a student to receive a high school diploma rather than a completion certificate. R Ex. 2-A. FSA further asserts that student #16 personally filed a complaint with the Department clearly stating that she did not have a high school diploma. *See* ED Ex. 1-11. FSA argues that KSHD failed to provide the Department with a valid high school diploma or GED for student #16, and therefore cannot meet its burden of establishing that Title IV funds were properly disbursed to the student. As a result, FSA claims that KSHD improperly disbursed \$7,400 to student #16, which must be repaid to the Department.

Finding 6

For Finding 6, KSHD argues that, pursuant to its aforementioned argument for dismissal of Finding 1 liability, the recalculation of Return to Title IV (R2T4) funds for student #8 is "null and void." FSA responds that this is incorrect in that Finding 6 is separate from Finding 1 and is independently based on the school's failure to use the scheduled hours as of student #8's withdrawal date for the second payment period. FSA states that when a student receiving Title IV, HEA assistance withdraws from an institution during a payment period or period of enrollment in which the student began attendance, the institution must determine the amount of Title IV, HEA funds that the student earned *as of the student's withdrawal date*. 34 C.F.R. § 668.22(a) (emphasis added). In determining the student's withdrawal date, several factors must be taken account of, including (1) how the academic terms are structured; (2) whether the student officially or unofficially withdrew; and (3) whether or not the school is required to take attendance. *See* 34 C.F.R. §§ 668.22(a)-(c). For an institution required to take attendance, a student's withdrawal date must be assessed by using the last date of academic attendance as determined by the institution from its attendance records. 34 C.F.R. § 668.22. In calculating the return, the institution must determine the amount of actual hours attended and the amount of

hours scheduled to be completed as of the students' withdrawal date. *See* 34 C.F.R. § 668.22(e)(2). FSA asserts that, pursuant to the FPRD, KSHD mistakenly calculated the return for student #8 by using an incorrect amount of scheduled hours for the time period the student was enrolled, based on KSHD's incorrect understanding of a clock hour. *See* ED Ex. 1-13. FSA therefore claims that KSHD retained \$1,573 more than it should have, and such funds must be returned to the department.

Discussion

I find that KSHD has offered no evidence sufficient to rebut the liabilities assessed in Findings 1, 2, or 6 of the FPRD, as adjusted accordingly in the FSA brief. For Finding 1, KSHD misconstrued the definition of a "clock hour," drawing support from case law that is no longer applicable. *See* 34 C.F.R. § 600.2 (definition of a clock hour); *see also Instituto de Educacion Universal v. U.S. Dep't of Educ.*, 341 F.Supp.2d 74 (D.P.R. 2004). Moreover, while KSHD argues that the breaks should not be excluded because many students working on the clinical floor do take such mandatory breaks, this is inconsistent with the clear language of its course catalog, ED Ex. 3-9, and unsupported by any additional evidence. For Finding 2, KSHD has failed to provide a valid high school diploma or GED for student #16 as required in order for the student to be eligible to receive Title IV, HEA assistance. 34 C.F.R. § 668.32. Therefore, student #16 was ineligible to receive Pell funds for the 2011/2012 and 2012/2013 award years in the amount of \$7,400. For Finding 6, KSHD has not provided the proper documentation that the refund return amount for student #8 has been paid; therefore, it must return the \$1,573 in Pell funds to the Department. Accordingly, I must affirm the findings and the liabilities established in the FPRD, as adjusted to reduce the liability owed for Finding 1 and to eliminate the liability for Finding 3, in the amount of \$22,643.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that the KeVosNik School of Hair Design pay \$22,643 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: May 28, 2014

SERVICE

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

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