



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

In the Matter of

Docket No. 13-58-SP

**INSTITUTE OF MEDICAL
EDUCATION,**

Federal Student
Aid Proceeding

Respondent.

PRCN: 2012 2092 7786

Appearances: Bindu Baburajan, President, Institute of Medical Education.

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

Institute of Medical Education (IME), a proprietary, post-secondary educational institution, was a participant in the federal student aid programs 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 August 23, 2013, FSA issued IME a Final Program Review Determination (FPRD) assessing a liability of \$8,378,031.72 to the Department because of eight program violations found to have occurred during the 2010-2011 and 2011-2012 award years. This amount represents all Title IV funds received by IME during those years, but amended to reflect liabilities and credits resulting from a September 7, 2012, Final Audit

Determination¹, a Letter of Credit offset, and closed school loan discharges. The final demand from the Department is for \$8,679,790.72. IME appealed this determination.

FSA conducted a program review at IME on January 11-12, 2012, and this review was continued off-site from January 14-February 1, 2012. During that review a sample of 30 student files from the 2010-2011 and 2011-2012 award years were examined and multiple regulatory violations were discovered. FSA sent IME a program review report on October 11, 2012, which identified these violations. IME's response was received on April 8, 2013, and FSA decided the institution did not adequately address all of the findings. Accordingly, the final determinations were based on information collected during the program review and documentation previously submitted by IME.

The eight findings of the FPRD are summarized as follows:

Finding 1: Lack of Administrative Capability. This was illustrated by IME's failure to: adequately account for federal funds and establish internal controls; reconcile Title IV program accounts; implement adequate separation of duties in Title IV cash management; maintain sufficient documentation to support its students' eligibility for Title IV funds; maintain adequate attendance records; and monitor satisfactory academic progress. *See* 34 C.F.R. § 668.16.

Finding 2: Failure to Adequately Account for Federal Funds and Lack of Internal Controls. This finding alleges IME failed to act as a responsible fiduciary in its administration of, and accounting for, the Title IV funds it was entrusted to administer. This highlighted IME's failure to: safeguard and adequately account for federal funds; establish written Title IV cash management policies and procedures; retain financial records to support Title IV transactions; retain qualified employees in the fiscal office; develop and maintain adequate computer and manual systems; reconcile its Title IV accounts and records; and have a proper separation of duties. *See* 34 C.F.R. § 668.24.

Finding 3: Inadequate Attendance Record-Keeping System and Incorrect Return of Title IV Funds Calculations. IME had an attendance policy which allowed for terminating students if they had 10 days of absence, but it failed to implement an adequate system for determining a student's last day of attendance. *See* 34 C.F.R. § 668.22.

Finding 4: Failure to Monitor Satisfactory Academic Progress (SAP). IME did not have any system for substantiating that a student was making SAP or that a student's SAP was checked prior to disbursing Title IV aid. *See* 34 C.F.R. § 668.34.

Finding 5: Failure to Resolve Institutional Student Information Record (ISIR) Comment (C) Codes. IME failed to review and reconcile information on the ISIRs for three students in the sample whose files were flagged with a (C) code, indicating that the student aid files lacked critical information which must be included before Title IV funds can be awarded. *See* 34 C.F.R.

¹ Liability for IME's failure to submit a close-out audit was addressed in *In the Matter of Institute of Medical Education*, Dkt. No. 12-59-SA, U.S. Dept. of Educ. (Feb. 14, 2013) (currently under appeal to the Secretary of Education).

§ 668.16(f).

Finding 6: Verification Not Performed/Inadequate Verification. IME failed to verify information used to calculate the Expected Family Contribution for two applicants in the sample. *See* 34 C.F.R. §§668.54-668.57.

Finding 7: Ineligible Certification of Direct Loan for Dependent Student. IME awarded subsidized and unsubsidized loans to a dependent student without the required documentation indicating the parents would have been precluded from borrowing under the PLUS Program or that the family would otherwise be unable to provide the student's Expected Family Contribution. *See* 34 C.F.R. §§668.201(a) and (b).

Finding 8: Missing Institutional Student Information Record. The ISIR for one of the students was missing, along with the award letter for the 2010-2011 award year, thus the reviewers were unable to determine whether the student was eligible for Title IV funding. *See* 34 C.F.R. § 668.24.

In proceedings such as this, the Department has the initial burden of production which it has satisfied with the presentation of the FPRD. Following this, the respondent institution has the burden of proving, through a preponderance of the evidence, that it satisfied its role as a fiduciary for these federal student aid funds, meaning its disbursement of those funds was in accordance with statutory and regulatory guidelines. *See* 34 C.F.R. §§ 668.14, 668.82(a) and (b), and 668.116(d); *In the Matter of Sinclair Community College*, Dkt. No. 89-12-S, U.S. Dep't of Educ. (Decision of the Secretary) (Sept. 26, 1991).

By letter dated September 30, 2013, IME signified its intention to appeal the findings of the FPRD and, simultaneously, have this letter serve as its brief in support of the appeal. I have examined this letter and find that nowhere in this letter does IME attempt to rebut the findings in the FPRD. The letter is primarily a vehicle to elaborate upon the events leading up to its termination of academic services, which began with its loss of accreditation on October 26, 2010, its voluntary withdrawal from the Title IV program on February 7, 2012, and its closure on July 19, 2012. IME's primary focus, generally, is an attempt to dispute the findings, issues, and facts found in the FPRD "in its entirety," but it does so without providing any specific facts to corroborate its appeal. It also questions why this FPRD was not issued until over a year after IME closed its doors. It argues that it thought an FPRD was supposed to be issued for corrective purposes to a Title VI participating school, and since it ceased operations almost 18 months before the FPRD was issued, it sees no useful purpose for this document other than to perhaps reinforce the actions of its former accrediting agency.

In addition to this, IME believes it is unreasonable for FSA to require it to reconstruct its Title IV records for the period July 2010 to February 2012 at a time when all of its records have been seized by the California Bureau of Private Postsecondary Education (BPPE). It says its situation is complicated by the fact it has no, and cannot retain, necessary administrative or financial aid personnel on its staff to perform any of the reviews ordered by the FPRD. Further, IME points out that because the FSA requires adequate separation of duties in all of its Title IV operations, it would be improper for the current president and CEO of IME to perform these

reviews. Despite this, IME says it is prepared to hire an independent auditor to reconcile all of the student files, and that after that is completed they will assuredly conclude that FSA owes it a refund. However, to date, no such reconciliation has been submitted to FSA.

FSA counters IME's insinuation that there were improper motives behind FSA's decision to conduct a program review of IME's operation of the federal student aid programs by reminding IME that FSA is required to ensure that ineligible Title IV funds disbursements or unsupported Title IV expenditures are identified as liabilities. *See* 34 C.F.R. §§ 668.111(a) and 685.214. FSA adds that this obligation is ever-present and it uses program reviews and the resulting FPRDs to hold a school accountable for federal student aid funds entrusted to it. *See* 34 C.F.R. §§ 668.14(b)(1), (2), (4), (6), and (8); 668.82(a) and (b). I find no evidence of impropriety by FSA in this proceeding.

IME's general defense of its failure to perform the required reconciliation of its records is that, because of its loss of accreditation it is unable to retain the required personnel to perform these functions. Further, it says it cannot take any responsibility for the current state of the student documents since they have been under BPPE control and possession since September 2012. FSA assures the tribunal that the records remain in the same condition as when they were delivered to BPPE and explains that it and BPPE have informed IME that it and its auditor could freely access these records onsite. FSA informs the tribunal that IME has made no attempt to review these records.

IME also reports that it has "completed a full and thorough financial and compliance statement audit for the 2010 fiscal year" and infers this should be a substitute for student record reconciliation for that year. FSA advises that this audit covered only six months of that period under review and that it does not demonstrate that it addresses all of the findings in the FPRD. Likewise, FSA disputes IME's assertion that FSA's 2010-2011 and 2011-2012 Common Origination and Disbursement System reports indicate that its Title IV expenditures were clearly reconciled. In fact, FSA points out that these documents indicate that rather than support IME's assertion of compliance, they provide evidence that IME retained \$233,394 in excess cash for which it failed to account.

IME has submitted no evidence to undermine the reasonableness or the authority of the FPRD. More importantly, it has not submitted any evidence to refute its findings, thus I must affirm the FPRD and its findings. The FPRD authenticates IME's total disregard for its responsibility to act as a fiscal guardian of the Title IV funds entrusted to it to be dispersed to eligible students. By its failure to comply with these federal statutes and regulations, it should be required to return all Title IV funds inappropriately disbursed. Accordingly, I affirm the findings and liabilities set out in the FPRD, as amended by FSA to reflect the previous Final Audit Determination, Letter of Credit, and closed school loan discharges.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Institute of Medical Education pay \$ 8,679,790.72 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: January 13, 2014

SERVICE

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

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