



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

In the Matter of

**PERFORMANCE TRAINING
INSTITUTE,
TOMS RIVER (NJ)**

Docket No. 15-42-SP

Federal Student Aid Proceeding

PRCN: 201210227717

Respondent

DECISION

By letter dated June 2, 2015, John L. Kirsten, CEO of RSTM, LLC (d/b/a Performance Training Institute (NJ)), filed a written Request for Review in the above-styled proceeding. PTI challenged the findings presented in a Final Program Review Determination, dated April 22, 2015, issued by the U.S. Department of Education, Federal Student Aid (FSA) office. The Determination imposes a liability on PTI to repay \$18,930,782.00 to the U.S. Department of Education. PTI's review request was filed pursuant to 34 C.F.R. § 668.113 (a). The appeal procedures for these proceedings are set forth in 34 C.F.R. Part 668, Subpart H.

PTI has the burden of proof in this proceeding. See 34 C.F.R. § 668.116 (d). On July 6, 2015, an Order Governing Proceedings was issued directing Performance Training Institute to file its brief and evidentiary matters by Friday, August 14, 2015. The Respondent neither filed its brief by that date nor requested an extension of the filing date. On September 11, 2015, FSA's Counsel filed a Motion requesting a default judgment be entered against the Respondent.

34 C.F.R. §668.117(c)(3) provides in relevant part that:

The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

In order to give the Respondent a final opportunity to comply, a Show Cause Order was issued under the authority of 34 C.F.R. §668.117(c)(3). The original order governing proceedings was served by U.S. first class mail¹. The Show Cause order was served by certified mail to the address provided by PTI, with delivery confirmed by return receipt. PTI was ordered

¹ Delivery by first class mail through the U.S. Postal Service to the California address provided by the Respondent is presumed, since the Order was not returned to the Office of Hearings and Appeals. Delivery of the Show Cause Order to that same California address has been confirmed by written return receipt of the certified mailing.

to provide its brief and evidentiary exhibits to the undersigned and also to FSA counsel on or before September 28, 2015. The Respondent was also ordered to show cause why this proceeding should not be terminated and why a default judgment should not be entered in favor of FSA affirming the findings and demand in the Final Program Review Determination. Because PTI has not provided any filing or communication, the administrative record in this appeal is ordered closed. The Respondent has abandoned its appeal.

Because PTI failed to provide its brief and supporting evidence, this decision must be based on a review of the administrative record as it exists. I find that FSA's findings contained in its Final Program Review Determination and supporting documentation established a *prima facie* showing that PTI has failed to comply with Title IV program requirements.

The record shows the two disputed findings are Finding 2 (relating to PTI having an improper definition of Clock Hour/Improper Program as offered which did not meet Title IV's program requirement) and Finding 5 (concerning last date of attendance documentation for funds required to be returned to Title IV).

For Finding 2, the Final Program Review Determination relied on the plain language in the Title IV regulation defining a clock hour as:

- (1) A 50 to 60 minute class, lecture, or recitation in a 60 minute period
 - (2) A 50 to 60 minute faculty supervised laboratory, shop training, or internship in a 60 minute period; or
 - (3) Sixty minutes of preparation in a correspondence course.
- 34 C.F.R. § 600.2.

PTI is a 100 % online program, providing distance education as defined in 34 C.F.R. § 600.2. PTI doesn't contend that (3) above applies, since it does not meet that same regulation's definition of a correspondence course. Both (1) and (2) above require either actual online in class participation, or faculty supervised labs, training or internships for set increments of time. In applying either criteria to PTI's online program, there is no self-study component. Nonetheless, PTI's review request argues that its online program should be allowed to have an online self-study component.

PTI argues that it in an ideal world, due to the nature of distance education, students should be granted maximum flexibility to engage in those activities whenever convenient, and also points out that it was accredited during that time, and finally that it was also approved by the state of New Jersey's State Department of Education and Department of Labor. PTI finally argues that it is unfair for this criteria to not have been raised previously during its accreditation with its accrediting agency.

Such arguments by PTI ignore the nature of the interaction between the accrediting agencies, the state regulatory bodies and the Department of Education. The role of a recognized accrediting agency does not include the responsibility for making Title IV eligibility determinations. That duty is the responsibility of the Department of Education. *See* HEA §498, 20 U.S.C. §1099(c). Certainly accrediting agencies are recognized by Education if reliable in

assessing the quality of postsecondary education programs, but they cannot know and enforce Title IV requirements. *See* HEA §498, 20 U.S.C. §1099(b).

Under the plain language of (1) and (2), PTI's proposed clock hours do not meet the regulation's criteria. While PTI's argument for flexibility may be viewed by some as a worthwhile policy goal to be pursued, there are competing policies to insure proper oversight in federal education fund spending that have been expressed in the regulation, and which must control. Given the plain language of (1) and (2), I find that PTI has failed to meet its burden on Finding 2.

For Finding 5, the Final Program Review Determination found inadequate documentation for PTI's figures of the funds that must be returned to Title IV. If a student ceases to attend an institution prior to the completion of his/her program, an institution must refund all unearned Title IV funds. 34 C.F.R. § 668.22. The amount of Title IV funds an institution is allowed to keep is based on the student's withdrawal date. The Final Program Review Determination found the documentation on how PTI calculated the withdrawal dates did not meet the requirements in 34 C.F.R. § 668.22. PTI in its appeal provides the bare assertion that the withdrawal dates were properly documented; however, no evidence to support that assertion was filed or submitted. PTI has also failed to meet its burden on Finding 5.

ORDER

On the basis of the above findings, it is ordered that Performance Training Institute, Toms River, NJ pay to the U.S. Department of Education the sum of \$18,930,782.00, as demanded in the Final Program Review Determination.

Robert G. Layton
Judge

Dated: October 8, 2015

SERVICE

A copy of this order was sent by Certified U.S. Mail, return receipt requested, to the following:

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