



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

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In the Matter of

**Docket No. 15-65-SA**

**WILBERFORCE UNIVERSITY,**

Federal Student Aid Proceeding

Respondent.

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Appearances: Paul G. Lannon, Esq., Philip J. Cantanzano, Esq., and Brian J. Goodrich, Esq., Holland & Knight LLP, Boston, Massachusetts, for Wilberforce University.

Jennifer L. Woodward, Esq., Office of the General Counsel, U.S. Department of Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Ernest C. Canellos

**DECISION**

Wilberforce University (Wilberforce), located in Wilberforce, Ohio, is reportedly the nation's oldest private, historically black university. It provides a variety of post-secondary educational programs, and is eligible to participate in the federal student financial assistance programs that are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* The Office of Federal Student Aid (FSA) is the cognizant agency within the U. S. Department of Education (ED) that administers and oversees these programs. As part of its responsibility as a Title IV eligible educational institution, on October 31, 2011, Wilberforce filed a single audit report issued by Crowe Horwath, LLP, performed in accordance with the requirements contained in OMB Circular A-133. This audit report covered the period of July 1, 2009 thru June 30, 2010, and entailed a variety of federal programs, including those programs authorized under Title IV. A significant finding reported by the auditors, pertaining to the Title IV federal student assistance programs, was that there was a 42% error rate (17 out of 42 students) in the area of Wilberforce's compliance with the requirement to verify certain student information, as it is delineated in 34 C.F.R. § 668.54, *et seq.*

After a preliminary review, on December 5, 2011, FSA directed Wilberforce to conduct a full-file review of all its students that were subject to verification, to assure compliance. In that vein, 34 C.F.R. § 668.54 (a) (2) provides that an institution must assure that for any student that is selected for verification, it must verify all the items designated and promulgated by the

Secretary to be verified. In addition, 34 C.F.R. § 668.54 (a) (3) provides that if an institution has reason to suspect that any information in a student's application for federal student financial aid is inaccurate, it is required to cause the student to recertify that information.

After a number of exchanges of communication between FSA and Wilberforce, FSA issued a Final Audit Determination (FAD), dated April 7, 2015. Therein, FSA determined that Wilberforce had incorrectly disbursed federal student financial assistance funds to 189 out of 435 students during the 2009 - 2010 award year. As a consequence, FSA demanded that Wilberforce return \$1,503,798.83, to ED. On April 30, 2015, Wilberforce filed an appeal in which it challenged the findings in the FAD and requested an administrative hearing. In due course, Wilberforce requested time to allow it to complete a further search for missing information; on November 3, 2015, it submitted some documentation to FSA and, on December 2, 2015, the case file was forwarded for action to the Office of Hearings and Appeals. Subsequent to a series of concurred- in extensions of the briefing schedule, on June 21, 2016, final briefs were submitted.

As a preliminary matter, in my resolution of any dispute that results from a FAD, and assessing the resulting liability, it is important to recognize that after receiving an appropriate notice of a violation, the respondent has the burden of proving that the questioned expenditures were correct and that it did not violate any regulatory requirements. 34 C.F.R. § 668.116(d). In its appeal, Wilberforce argues that FSA's claim in four areas, involving 24 students, was incorrect. First, it argues that certain student information which FSA claimed contained verification errors, was, in fact, accurate. Second, Wilberforce asserts that it has collected the required tax information that FSA claimed was incomplete. Third, it claims there was no conflicting information requiring additional verification, contrary to FSA's allegation. Finally, the C Code violation identified by FSA was correctly resolved. In summarizing its plea, Wilberforce argues, "for 24 of the 189 students, FSA's determination that Wilberforce failed to complete verification is inaccurate." However, my initial review of Wilberforce's brief indicates only 23 students are included in these categories and that there is no articulated defense as to any of the remaining 165 students. This includes the case of Student #240 wherein Wilberforce claims there is no violation, yet offers no evidence relative thereto. Separately, I note that FSA has apparently accepted Wilberforce's evidentiary submission relative to the C Code violation, referenced above, and no longer seeks return of the Title IV funds related thereto.

In addition to these disputed findings, Wilberforce requests that it be afforded "equitable relief." In that vein, Wilberforce, alluding to a previous proceeding involving it before the Office of Hearings and Appeals, requested that it be granted additional time to gather needed additional documentation. It alludes to the fact that in the case of fifty students, their files lack only one or a few documents; and given more time, their efforts to procure the missing documentation could be productive. Also it claims that with the new procedures that it has adopted together with the hiring of new, experienced financial aid professionals, it should be able to successfully overcome the previous disarray in the financial aid office -- there is an inference that this contributed to the failures at issue before me. As to this request, FSA objects, pointing that I do not have the jurisdiction to afford equitable relief, and further, FSA has granted an extensive period of time

for Wilberforce to provide the missing documentation -- the granting of more delay would seem to be futile. I note that under the provisions of 34 C.F.R. § 668.117, I have the authority to control the hearing process. Although I do not necessarily agree with FSA's categorization of the extent of my authority in proceedings of this type, I do not find that authorizing additional time would be beneficial, therefore, I deny the request for more time.

On the merits, FSA in its responsive brief, accepts Wilberforce's evidence and argument for the violations involving ten of the students (#s 30, 68, 78, 101, 146, 233, 242, 313, 315, and 375) and it removes them from its claim of error. However, FSA rejects Wilberforce's argument for the other 14 students (#s 20, 43, 200, 240, 62, 74, 75, 84, 171, 307, 376, 179, 320 and 385), and urges I do likewise in my findings. In my review and as a preliminary matter, I find that:

(1) Wilberforce, has as a matter of law, failed to satisfy its burden of proof as to the disputes involving the 165 students in which it has failed to present any evidence establishing that the federal student aid the students received was disbursed correctly.

(2) I accept FSA's withdrawal of its claim involving the 10 students it conceded and I dismiss them from any further involvement in this proceeding.

I will discuss the cases of the students who are still in contest, by category, below.

#### Student files cited for missing documentation

# 20 – Wilberforce executed a dependency override and characterized the student as independent, based solely on the student's signed letter. FSA points out that there must be some independent third party verification in such a case and none is included in the file.

# 43 – The student's file contained an incomplete Institutional Student Information Record (ISIR), in that the second page of the worksheet was missing.

# 200 – The student received \$7,964.50 for work. This amount was indicated on the verification worksheet, but not on the ISIR and no Estimated Family Contribution (EFC) recalculation was done, as required.

#### Failure to obtain required tax documentation

# 62 – Wilberforce obtained a copy of the parent's tax return, however, the parents still did not sign the verification worksheet, as required.

# 74 – Parent's tax return was not signed. A tax return transcript was in the file but that transcript was not sent directly from the IRS to the school, as required.

# 75 – Parent's tax return showed business loss of \$7,050, yet there was no Schedule C showing the loss and no business worth on the student's ISIR, making verification incomplete.

# 84 – There was no acceptable copy of the parent’s tax return – only a copy of the tax preparer’s software copy in the student’s file.

# 171 – The verification worksheet was incomplete because income from work and scholarship income were not verified, as required.

# 307 – Although an acceptable tax return was included in the file, the verification worksheet is not signed, as required.

# 376 – The parent’s tax return is not signed, rendering the verification incomplete.

Conflicting information requiring additional verification

# 179 – The student’s ISIR states that the parents are divorced or separated, but the verification worksheet lists both parents as members of the household.

# 320 – The signatures on the parent’s income tax return and the verification worksheet did not match. There was neither an explanation nor any effort to resolve the conflict.

# 385 – Wilberforce categorized the student as independent on the basis of being placed in legal guardianship at age eight. There was no evidence that the student was in that status after age thirteen, as required.

**FINDINGS and ORDER**

In each of the above contested items, I find that Wilberforce University has failed to meet its burden of proof and, as a result, must return the Title IV funds in issue. Also, Wilberforce failed to present any evidence or argument in the cases of the other 165 students, likewise failing to meet its burden of proof, as to their cases. Consequently, it is ORDERED that Wilberforce University pay to the United States Department of Education the sum of \$1,313,979 for the approved findings of its actionable failures to comply with the reporting requirements. This is based on uncontested liabilities of \$1,188,632 and \$125,347 for the 14 students in dispute.

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Ernest C. Canellos  
Chief Judge

Dated: September 22, 2016

SERVICE

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

Paul G. Lannon, Jr., Esq.  
Philip J. Cantanzano, Esq.  
Brian J. Goodrich, Esq.  
Holland & Knight LLP  
10 S. James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116

Jennifer L. Woodward, Esq.  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-2110