



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

In the Matter of

SISSETON WAHPETON COLLEGE,

Respondent.

Docket No. 17-15-SA

Federal Student Aid Proceeding

ACN: 08-2014-63443

Appearances: Gordon P. Nielsen, Esq., Delaney, Nielsen, Sannes, PC, Sisseton, South Dakota, for Sisseton Wahpeton College.

Angela L. Sierra, 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

PRELIMINARY MATTERS

Sisseton Wahpeton College (SWC) is a Tribal College, established in 1979 on the Lake Traverse Indian Reservation, in Sisseton, South Dakota. It is accredited by the North Central Association's Commission on Institutions of Higher Education, and participates in the various federal student financial assistance programs that are authorized under the provisions of Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* (Title IV). The Office of Federal Student Aid (FSA) is the organization within the United States Department of Education (ED) that administers these programs.

As part of its Title IV oversight responsibilities, SWC engaged the accounting firm of EideBailly, of Fargo, North Dakota, to audit its financial statements, as of June 30, 2014, as required by O.M.B. Circular A-133. On June 30, 2016, the audit report was issued. FSA's review of the audit report resulted in the issuance of a Final Audit Determination (FAD) dated December 14, 2016, containing a demand for the return of \$81,698.00 for four adverse findings by the auditor. When some glaring errors in the FAD were pointed out by SWC, FSA withdrew that FAD and, on February 2, 2017, issued a corrected new FAD. In that new FAD, FSA

demanded the return of \$81,699.00.

By letter dated March 13, 2017, SWC's President filed a Request for Review in the above titled proceeding challenging the findings in the FAD. On April 10, 2017, I established a briefing schedule requiring SWC to file its brief and evidentiary submissions on or before May 19, 2017. Prior to that date, on May 11, 2017, SWC and FSA filed a Consent Motion to Stay Proceedings in order to pursue settlement negotiations. I approved a request to extend the stay a number of times -- the last such extension was dated October 2, 2017. On December 5, 2017, FSA filed a Motion for Default Judgment on the basis of Respondent's failure to submit its required brief by November 27, 2017, as I had directed in my order granting the last stay in the proceedings.

Rather than issuing a default judgment, on December 5, 2017, I exercised my authority under 34 C.F.R § 668.117(c)(3), and issued a Show Cause Order directing that on or before December 20, 2017, SWC show cause why I should not terminate the proceedings and issue a judgment for FSA, based on SWC's failure to comply with its obligation to submit its brief, as required. On December 18, 2017, SWC responded through newly appearing counsel and requested time to file its brief. On December 21, 2017, I reauthorized new filing dates for the respective briefs of the parties. SWC submitted its brief and evidentiary material on January 23, 2018, and FSA submitted its brief and supporting matter on February 23, 2018, both in a timely fashion. Basically, SWC argues that the errors in the original FAD are fatal. FSA, on the other hand asserts the new FAD was correct, SWC was given adequate time to present its case and it failed to establish the correctness of its challenged expenditures.

DISCUSSION

As pointed out by SWC, my review of the original FAD, dated December 14, 2016, reveals a number of unexplained errors. Contained therein include: an incorrect OPE ID #; the misidentification of the Respondent; and a claim arising from errors in the Direct Loan Program when SWC does not participate in that program. As an apparent result of the input from SWC, FSA reissued the FAD on February 2, 2017, attempting to correct those errors.

In any appeal before me of a FAD, the Respondent has the burden of proving that its expenditures were proper and that it complied with program requirements found in the provisions of Title IV. 34 C.F.R. § 668.116(d). Before I can apply such burden, I first must determine whether the Respondent was afforded proper notice of the complaint. In that vein, I do not excuse erroneous actions and although there was certainly some confusion in the original FAD, I find that the February 2, 2017 FAD provided the requisite notice.

In determining whether SWC met its burden of proof, I reviewed SWC's brief and evidentiary matters. My review indicated that SWC complained about the administrative errors of the original FAD and asserted that agents of ED removed student files from SWC. It argues, "the files in question that the U.S. Department of Education is fining the SWC for could very well be the files the U.S. Department of Education already removed." Significantly, I note that SWC's brief does not contain any argument or evidence seeking to adequately address FSA's

claims involving individual students in any specific way.

Contrariwise, FSA's brief is specific as to the individual cases it asserts as being in violation of Title IV requirements. Significantly, FSA asserted that based on further review of SWC's input, it reduced its demand from \$81,699.00 to \$13,316.75. In addition, FSA argued that SWC did not address any of the specific demands made in the amended FAD. Finally, it argued that the errors in the original FAD were not egregious and were corrected in the amended FAD. It further argued that agents of FSA did not remove any documents from SWC at any time. As to the merits, FSA points out that in the amended FAD, it provided evidence that two out of the three specifically identified students (Numbers 3 and 15) were ineligible for federal student aid because they were in default of prior federal student loans. Also, FSA provided evidence that five out of the original thirteen identified students (Numbers 63, 82, 174, 233, and 253) were ineligible to receive Title IV aid because their mandatory verification was incomplete. In review, FSA argues that SWC never addressed the merits of any of those students' claims and presented no evidence relating thereto. Finally, FSA presented an affidavit from the IG special agent involved in the investigation at SWC, wherein he attests to the fact that no files were ever removed from SWC.

FINDINGS

I find that the evidence of record establishes that Students 3 and 15 were ineligible to receive Title IV aid because they were in default of previous Title IV loan obligations, in violation of 34 C.F.R. § 668.32(g)(1), and that they failed to purge such violation, as provided in 34 C.F.R. § 668.35(a). FSA presented affidavits in support of such finding, yet SWC presented no evidence in rebuttal. Further, I find that students 63, 82, 174, 233, and 253 were ineligible to receive Title IV funds because of failures to produce verification of various elements of the students' entitlement to Title IV funds. As to each of those students cited above, FSA has presented affidavits attesting to the violation and the resulting claim for return of Title IV funds. However, in each case, SWC has presented no evidence sufficient to satisfy its established burden of proof that such Title IV aid was properly disbursed, as it was its duty to do under the provisions of 34 C.F.R. § 668.116(d)(1) and (2).

ORDER

On the basis of the above findings of law and fact, I hereby order that Sisseton Wahpeton College return to the United States Department of Education the sum of \$13,316.75, for the approved findings of Sisseton Wahpeton College's actionable failure to comply with Title IV reporting requirements.

Ernest C. Canellos
Chief Judge

Dated: April 17, 2018

SERVICE

A copy of the attached document was sent certified U.S. mail to the following:

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