



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

CABOT COLLEGES,

Respondent.

Docket No.97-15-SP

Student Financial

Assistance Programs

DECISION OF THE SECRETARY

Procedure

In September 1993, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) conducted a program review to evaluate Cabot Colleges' (Cabot) administration of the Title IV programs for the 1991-92 and 1992-93 award years. SFAP reviewed a sample section of 10 students from each award year. The review revealed that every file in the sample contained at least one regulatory violation. As a result of the widespread violations, SFAP directed Cabot to conduct file reviews in 13 different areas of non-compliance to accurately determine the liability. Cabot failed to conduct the required review in the areas of record production and enforcement of attendance policies. In light of this breach, SFAP issued a Final Program Review Determination (FPRD), assessing liability for all Title IV funds received by Cabot during awards years 1991-92 and 1992-93. Cabot appealed the findings of the FPRD to the Office of Hearings and Appeals and on October 30, 1998, the hearing official rejected the liability assessed by the FPRD. SFAP now appeals.

Discussion

As participants in Title IV programs, institutions act as fiduciaries. As a fiduciary, an institution is subject to the highest standard of care and diligence in administering these programs and in accounting to the Department for funds received. 34 C.F.R. § 668.82(a), (b). Common law requires a fiduciary to reimburse the principal for the amount of the expenditure when that fiduciary is unable to prove that a given expenditure was proper. See *Donovan v. Bierwirth*, 754 F.2d 1049, 156 (2d Cir. 1985); *Bynum v. Baggett Transportation Co.*, 228 F.2d 566, 573 (5th Cir. 1956). See also *SFAP's Brief* at 4. Further, as SFAP notes, a fiduciary must provide an accounting for its expenditures. *Restatement (Second) of Trusts § 172-73 (1959)*. In the case at hand, SFAP required Cabot to account for the propriety of its Title IV expenditures and demonstrate its compliance with the regulations. In turn, Cabot failed to perform its accounting responsibilities. It is well established that when an institution fails to defend its regulatory compliance it becomes liable for all of the questioned funds. In the Matter

of Texas College, Docket No. 98-21-SP (July 30, 1998); In the Matter of Frederico Tulare County College of Beauty, Docket No. 95-20-SP (December 9, 1996); In the Matter of Louise's Beauty College, Docket No. 95-48-SP (April 17, 1996); In the Matter of National Beauty College, Docket No. 95-16-SA (May 3, 1996) cert'd by Secretary (July 2, 1996); In the Matter of House James Beauty College, Docket No. 94-140-SP (January 17, 1995); In the Matter of Empire Technical Schools, Docket No. 92-11-SP (April 24, 1995); cert'd by the Secretary (August 15, 1995); In the Matter of Pan American School, Docket No. 92-118-SP (October 18, 1994) cert'd by the Secretary (July 25, 1995); In the Matter of Selan's System of Beauty Culture, Docket No. 93-82-SP (December 12, 1994). Notwithstanding the well established precedent, the hearing official held in his Initial Decision that Cabot was not liable for the Title IV funds it received during the award years 1991-92 and 1992-93. It is clear that Cabot failed to account for the Title IV funds in question. In the Initial Decision, however, the hearing official found that SFAP's assessment of liability was unreasonable since it was based upon only a few violations. Decision at 4-5. I disagree.

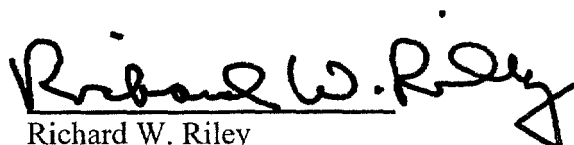
In accordance with Departmental policy¹, SFAP properly required Cabot to conduct complete file reviews to determine the liability reflecting its failure to produce records, (Finding #3) and its failure to enforce attendance policies (Finding #7 and #27). By requiring Cabot to conduct the file reviews, SFAP afforded the school an opportunity to accurately determine its liability. Cabot failed to meet its fiduciary obligation to conduct the required file reviews. The Initial Decision incorrectly implies that the number and type of violations found by the sample review should be considered when an institution fails to conduct a properly required file review. If Cabot were only held liable for the few instances of non-compliance identified through the 20 sample files, Cabot would benefit from its failure to account for the Title IV funds received. Moreover, such a result would encourage other institutions to breach their fiduciary duty to properly and accurately account for Title IV funds. Therefore, the liability assessed by the FPRD must be upheld.

Conclusion

For the forgoing reasons, the Initial Decision is hereby reversed and the liability assessed by Finding #3, #7, and #27 of the FPRD for unaccounted funds in the amount of \$609,127, and estimated losses for FFEL disbursements in the amount of \$992,057, is upheld.

So ordered this 25th day of July, 2000.

Washington, D.C.


Richard W. Riley

¹ See IRB Memo S-89-11.

SERVICE

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