

IN THE MATTER OF Docket No. 92-135-SP

INSTITUTE OF MULTIPLE Student Financial
TECHNOLOGY, Assistance Proceeding

Respondent.

Appearances: Richard W. Marcus, Esq., San Juan,
Puerto Rico, for the Respondent

Edmund J. Trepacz II, Esq., Office of the General Counsel, U.S. Department of Education, for
the Office of Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

PROCEDURAL HISTORY

The Institute of Multiple Technology (IMT), of Mayaguez, Puerto Rico, is an eligible proprietary institution of higher education offering varied programs at four locations in Puerto Rico. IMT participates in the Pell Grant and the Guaranteed Student Loan Programs, both authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). These programs are administered by the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED).

A program review was conducted at IMT by SFAP's Regional Office in New York City, New York. The review covered IMT's operations during the 1985-86 through the 1989-90 award years. Based upon its review of student files and other pertinent information, SFAP's reviewers concluded that INT had committed a number of program violations, including receipt of Title IV funds for students who had been enrolled in ineligible programs.

On October 2, 1992, based upon the above, SFAP issued a final program review determination letter which concluded that the findings of the review team were correct. All violations were resolved by agreement of the parties, except the finding that IMT funded ineligible programs. That finding was made because certain of IMT's programs were not licensed by the appropriate state licensing agency, thus making those programs ineligible. As a result, ED claims IMT must return \$919,691 in Pell Grant funds and \$35,588 in GSL interest and special allowances paid for students in these unlicensed programs.

DISCUSSION

IMT does not dispute ED's calculation of the amounts in issue, but does dispute that its programs were rendered ineligible. Hence, the question at issue is whether IMT's programs were rendered ineligible by virtue of gaps in their licensure.

As a prerequisite to participating in the Title IV program, an institution must be legally authorized to provide educational programs in the state where it is physically located. 20 U.S.C. 1085(c), 1088(b) and 1141(a). Here, the laws of the Commonwealth of Puerto Rico are controlling. Puerto Rico's licensing body was the Department of Public Instruction of Puerto Rico (DPI); today, the Department of Education of Puerto Rico (DEPR) oversees educational licensure.

ED maintains that IMT was required by DPI, during the award years in issue, to have the school and each of its courses licensed. ED asserts that several of IMT's programs were not licensed by DPI; that some of the program licenses expired during the term; that some of the licenses expired before a course was started but before the license was renewed; and that, in some cases, licenses were not renewed for long periods of time, i.e. 2 years.

IMT's argument seems to stress that, in light of the circumstances, the cited licensure failings were harmless error. IMT argues that DPI's failure to meet licensing and renewal deadlines in a timely manner led to a well understood and common practice that the state authorities ignored the applicable requirement that such applications be acted upon within 90 days. Furthermore, IMT claims that the law changed in 1989 to reflect this inability. The new licensing agency, DEPR, only requires that an institution, not its programs, be licensed. Hence, IMT excuses its failure to make timely applications because the state agency routinely failed to act on such applications on time. Moreover, it is worthy of note that IMT has an action pending in the Federal District Court seeking a declaratory judgement as to what the licensing requirements were at the time and the status of schools caught up in DPI's inaction.

This is not a case where a school took action to comply with all applicable laws and regulations, but was unable to fully comply by virtue of the inaction of others. Such a scenario would be more persuasive. However, IMT seeks to excuse its failure to comply with the law by claiming, in effect, that its compliance would have changed nothing - that Puerto Rico would not have acted in a timely manner even if the applications were timely filed. It asserts that its failure to so secure licensure is a technical violation; licenses were eventually secured for all programs; and it would be unfair to punish IMT for that reason.

IMT has the burden of proof and persuasion that they complied with the applicable regulations and their expenditures of federal funds was correct. 34 C.F.R. 668.116(d). Consistent therewith, IMT must establish that it was validly licensed at all times so as to be eligible to receive federal student aid funds. IMT did not meet this burden. It is uncontroverted that certain of IMT's programs were unlicensed; such licensing was required; no waiver of such requirement was sought or provided; and, the licenses that were finally secured were not made retroactive.

FINDINGS

I find that IMT failed to establish that certain of its courses were properly licensed; therefore, I find those courses were ineligible for receipt of Federal student financial assistance awarded under Title IV of the HEA. I further find that, as a result, IMT improperly expended \$919,691 in Pell Grant funds, and was awarded \$35,588 in excess interest and special allowances in the GSL program, both of which must be repaid to ED.

ORDER

It is ORDERED, that the Institute of Multiple Technology repay the United States Department of Education \$919,691 for Pell Grant funds improperly expended and \$35,581 in unearned interest and special allowance charges.

Judge Ernest C. Canellos

Issued: April 15, 1994
Washington, D.C.